JAMES KOUSOUROS

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July 31, 2006

(By Fax, regular mail and ecf)
Honorable Nicholas G. Garaufis
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: <u>United States of America v Vincent Basciano</u> 03-CR-929 (NGG)

Dear Mr. Garaufis;

This letter is respectfully submitted to request a conference in order to inform the court of an issue, briefly detailed below, concerning Mr. Basciano and to hopefully resolve same.

On July 28, 2006, the undersigned visited with Mr. Basciano at the Metropolitan Correctional Center from 9:00 A.M. until approximately 1:00 P.M. Mr. Basciano had expected to visit with his wife thereafter. The undersigned was later informed that as soon as he had returned to his floor, Mr. Basciano was placed in the Special Housing Unit or "the hole" and that he would not be permitted to have his visit. I was later informed that Mr. Basciano is being denied counsel visits as well until further notice. On Saturday, July 29, 2006 the undersigned was provided with a telephone number to call at the MCC on July 31, 2006 in order to ascertain why Mr. Basciano has been placed in solitary confinement and denied his access to counsel. We have still not received a return call. I contacted Assistant United States Attorney Thomas Seigel who informed me that the government was aware of the situation but could not provide details to counsel at this time. While the government is mindful of Mr. Basciano's rights relative to his having access to counsel, and while the government hopes to reinstate said access within a reasonable time, again, Mr. Siegel was understandably unable to provide any further details to the undersigned given the pending nature of the situation. Hence, this letter

requesting a conference in order to hopefully expedite a resolution to the immediate concerns posited herein.

As the court is aware, the undersigned is currently preparing for the commencement of the retrial of unresolved and additional counts from Indictment 03-929 (NGG) and given the voluminous record heretofore generated, weekly meetings with my client are indispensable to the effective preparation of the case. As such, we respectfully submit that Mr. Basciano's access to counsel must be immediately reinstated.

Thank you for your courtesy,

Very Truly Yours,

JAMES KOUSOUROS

Cc; Greg Andres
Thomas Seigel
Winston Chan
United States Attorney's Office
Eastern District of New York
225 Cadman Plaza
Brooklyn, New York 11201

Ying Stafford, Esq. 276 5th Avenue, Stc 501 New York, New York 10016

Ephraim Savitt, Esq. 260 Madison Avenue New York, New York 10016

Vincent Basciano Inmate No. 30694-054 Metropolitan Correctional Center 150 Park Row New York, New York 10007-1779

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1 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK 2 3 UNITED STATES OF AMERICA, 05 CR. 060 4 ٧. U.S. Courthouse Brooklyn, New York 5 VINCENT BASCIANO. : August 2, 2006 6 Defendant, 11:30 a.m. 7 8 TRANSCRIPT OF PROCEEDINGS 9 BEFORE THE HONORABLE NICHOLAS G. GARAUFIS UNITED STATES DISTRICT JUDGE 10 11 APPEARANCES: 12 For the Government: ROSLYNN R. MAUSKOPF 13 United States Attorney THOMAS SEIGEL 14 WINSTON CHAN Assistant U.S. Attorneys 15 One Pierrepont Plaza Brooklyn, New York 11201 16 For the Defendant: 17 JAMES KOUSOUROS, ESQ. EPHRAIM SAVITT, ESQ. 18 YING STAFFORD, ESQ. 19 20 Court Reporter: Burton H. Sulzer 21 225 Cadman Plaza East Brooklyn, New York 11201 22 (718) 613-2481 Fax # (718) 613-2505 23 24 25 Proceedings recorded by mechanical stenography, transcript produced by CAT.

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1 (Open court-case called-appearances noted.) 2 THE COURT: Good morning, 3 MR. KOUSOUROS: Your Honor, thank you very much for 4 calling our hearing as I requested in my letter of July 31st. 5 As the court is aware from my letter, I guess, on Friday, I believe it's July 28, 2006, after counsel had left 6 7 Mr. Basciano at the Metropolitan Correctional Center, he was returned upstairs and as he was getting prepared for a 8 personal visit at approximately 4:30, 5:00 o'clock in the 9 afternoon, he was taken to the Special Housing Unit, at which 10 point he was denied all visits. 11 12 I had gone down Saturday morning -- Miss Stafford did as well -- to inquire as to what was going on. We were 13 given the name of an individual to call Monday morning who 14 still hasn't returned my calls, but Mr. Seigel as good enough 15 16 to. 17 we were informed that not only was he being denied personal visits, he was being denied any and all visits 18 19 completely. I spoke to Mr. Seigel about it and basically asked him, Instead of having to request court intervention, if 20 the government could tell me either what was going on or give 21 me a time frame for its resolution and perhaps we could have 22 23 resolved it that way. 24 The government was not at liberty to do so; hence, I was constrained to request this court's intervention. I find 25

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- 1 out this morning, first from my client and then from Mr.
- 2. Seigel, that the order has been amended to the extent that ${ t I}$
- 3 and Mr. Savitt will be permitted access to Mr. Basciano. I
- 4 requested a time frame -- again, I'm not asking for anything
- 5 they don't want me to know or anything, I don't need to know,
- 6 just a time frame. Mr. Seigel declined to provide that or any
- 7 information as to the substance of the investigation.
- 8 Here are our issues, with all due respect. I'm
- 9 happy I can have access to my client, but, first of all, he's
- 10 in SHU, which is, aside from unduly restrictive and somewhat
- oppressive, he is denied everything else when he's in a
- 12 Special Housing Unit. We don't know why.
- 13 It makes it very difficult for me and for Mr. Savitt
- 14 to visit him with the frequency we need to. As you know, I've
- 15 got a 9500 page transcript to review and a trial to prepare
- 16 for and it's coming soon and I need to spend a lot of time
- 17 with Mr. Basciano.

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- 18 Secondly, and even more important, Judge, we are
- 19 interviewing lawyers, we have interviewed several attorneys to
- 20 come in and do some writing for us on the 03 case.
- 21 As you know from my second letter -- and I haven't
- 22 written you since I came onto the case, but I also sent you a
- 23 letter concerning the O5 case, Mr. Basciano needs to interview
- 24 and, if he can, retain trial counsel, if it's not going to be
- 25 me or if it is going to be me.

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There are things that need to be done and they need Page 3

- $08_02_06_BASCIANO[2].txt$ to be done now. We have gotten a schedule from you, we are
- 3 abiding by it. We have a trial schedule. We are planning on
- 4 doing the 03 case in January. There is a lot of work that
- 5 needs to be done. Mr. Savitt is learned counsel on the 05
- 6 case. There is an investigator who needs access to the client
- 7 but who is being denied access to the client.
- 8 We're not, with all due respect, sir, prepared to
- 9 accept nothing in terms of an explanation or any due process
- 10 concerning these issues because they are of paramount
- 11 importance.
- So I don't know how we resolve re this here, but we
- 13 want to know what's going on, we want to know why he's being
- 14 denied in whatever forum you believe it's appropriate. If it
- 15 needs to be in camera, we'll do that. We're not looking to
- 16 jeopardize any investigation, we're just looking for legal and
- 17 appropriate answers.
- 18 THE COURT: Before I ask the government to respond,
- 19 let me ask you some questions about your letter.
- 20 MR. KOUSOUROS: Which one?
- THE COURT: August 1st, I know about the other one.
- 22 What is the other one?
- 23 MR. KOUSOUROS: July 31st, but I know the letter to
- 24 which you're referring,

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25 THE COURT: This is the one that talks about your

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- 1 representation of Mr. Basciano and Mr. Levin and --
- 2 MR. KOUSOUROS: Right.
- 3 MR. SEIGEL; I have that. Page 4

- 4 THE COURT: It's the one that I'm concerned about,
- 5 the August 1st letter right now.
- 6 Having looked at both of them, you are Mr.
- 7 Basciano's counsel on the O3 case and the O5 case?
- 8 MR. KOUSOUROS: I was retained as trial counsel to
- 9 retry the 03 case. I'm in for that trial, for those
- 10 proceedings, to their conclusion.
- 11 As the court is aware, last week Mr. Levin filed, I
- 12 think it was last week, July 20th, I'm sorry, filed a motion
- 13 to be relieved. I know you haven't decided it, but he filed a
- 14 motion to be relieved. I can tell you that the relationship
- 15 which you saw somewhat deteriorating has deteriorated further
- 16 and there is no contact between them.
- 17 THE COURT: He was counsel in both cases.
- MR. KOUSOUROS: He is --
- 19 THE COURT: And -- go ahead.
- 20 MR. KOUSOUROS: He's off the O3 case, you relieved
- 21 him except for his obligation to file a Rule 29, which he may
- 22 be absolved of shortly anyway, but he is going to live by that
- 23 obligation.

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- 24 He was also retained quite some time ago on the o5
- 25 case. He moved on July 20 of '06 to be relieved on the 05

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- 1 case. We anticipate that you'll grant it based on the facts
- 2 therein, but also the deterioration of the relationship.
- What I've asked you is simply this. Right now Mr.
- 4 Basciano, relative to the o5 case, which is a death eligible

08_02_06_BASCIANO[2].txt case, de facto has no trial counsel. He's got as good a 5 learned counsel as you can find, but he's not got no trial б counsel. He has asked me, because there are things that need 7 8 to be done, to come onto the 05 case --9 THE COURT: I haven't Mr. Levin out of the death 10 eligible case. I'm not letting him out unless there's a 11 replacement. 12 You were not here at the time, but I've already 1.3 said, if Mr. Basciano files an affidavit of his finances and -- that he's financially unable to retain counsel, then 14 15 the court will appoint counsel for him, but one way or the other, there has to be someone in place at all times to 16 17 represent him as his primary attorney. 18 MR. KOUSOUROS: What I'm saying to you --19 THE COURT: That is the court's position. 20 MR. KOUSOUROS: Your Honor, we respect that position because it's the right position. All I'm saying to you is 21 this, respectfully, accept my notice. I just am very candid 22 with courts, I'm not going to file a notice and tell you three 23

I want to be up front and tell you that you know I'm

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months down the line I can't try the case.

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- 1- trying the 03 case. Right now you've got an April trial date.
- 2 we are promising, giving you our word that he will have trial
- 3 counsel in place. не always has, he's always had trial
- 4 counsel in place.

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- We're not prepared honestly to tell whether you the
- 6 finances are such that he won't be able to retain; we're not Page 6

- 7 going to prematurely make an application for you to appoint
- 8 somebody only then to retain somebody later.
- 9 All I'm asking you is this. Accept my notice. You
- 10 will have an attorney paying attention -- not that Mr. Levin
- isn't -- but an attorney paying attention in place right now, 11
- 12 your deadlines will be met, the case will be attended to. I'm
- 13 simply saying to you that I'm in this case, with your
- permission, but not yet as trial counsel. In the event I'm 14
- 1,5 not going to be trial counsel, this court will have ample
- 16 notice --
- 17 THE COURT: Of which case?
- 18 MR. KOUSOUROS: I'm only talking about the OS case.
- 19 This court will have ample notice and these proceedings will
- 20 not be delayed for lack of an attorney.
- 21 THE COURT: Mr. Savitt, where are you with respect
- 22 to the mitigation submission for the 05 case?
- 23 MR. SAVITT: well, initially a mitigation submission
- 24 was made to the U.S. Attorney's office last November and at
- 25 this point we're working to supplement that submission.

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1 THE COURT: What is the deadline?

2 MR. SAVITT: I believe it's August 21st.

MR. SEIGEL: That's correct, Judge. 3

4 THE COURT: Is Mr. Levin working on that or is that

5 just you?

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б MR. SAVITT: Actually, it's Miss Stafford and Mr.

7 Kousouros and myself.

Page 7

08_02_06_BASCIANO[2].txt 8 MR. SEIGEL: Can I say something on the issue of the notice of appearance? I don't think -- I mean what Mr. 9 Kousouros is asking is something I don't think the court 10 should give -- is not really for the court. In other words, 11 if an attorney files a notice of appearance, there is no such 12 thing as a partial notice -- you're in or you're not in. 13 14 If Mr. Kousouros files a notice, he's lead trial counsel by default. Mr. Savitt has a special role as learned 15 counsel, so he can say all these words to you about how his 16 17 role is limited, but there is no form for limited notice of appearance -- he's in. Which means that he runs the risk that 18 19 if no one else is in, the court will order him to stay in and 20 try the O5 case. 21 Separate from the court, if Mr. Basciano and Mr. Kousouros hire other lawyers and they have different roles and 22 23 they all file notice of appearances, as long as they don't 24 have any conflict that is obviously fine. What he's asking 25 for is sort of the court to bless his limited appearance. I

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1 don't think that's possible.

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THE COURT: What I'm hearing from Mr. Savitt, as a practical matter, is that Mr. Kousouros is participating in the preparation of the mitigation supplementation for the OS case. So in effect, he's in the OS case, even if he says "I may not try it."

Well, we're nowhere near getting that case tried, so if Mr. Basciano finds another attorney to try the case, why that will be what happens. But in the meantime -- that's why Page 8

- 10 I was a little concerned about this letter, and I don't want
- 11 to go line by line, but it made representations about the
- 12 somewhat ambiguous, I would say, ambiguous form of conditions
- 13 of representation, and I want to make sure that Mr. Basciano
- 14 currently, this moment, has both lead counsel and learned
- 15 counsel on the O5 case so that there's no issue, should there
- 16 ever be an appeal in that case, from a death sentence that he
- 17 had counsel throughout, active counsel, not Mr. Levin sitting
- 18 in Long Beach, you know, in his cabana -- all right -- but
- 19 that there's lead counsel now and there's learned counsel now
- 20 and throughout. That's where I am.
- 21 MR. KOUSOUROS: Your Honor, respectfully, that is
- 22 the right place to be. I respectfully disagree with the
- 23 government.
- 24 THE COURT: I don't care about what the government
- 25 says. I only care that you tell me that currently you are

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- 1- actively Mr. Basciano's lead counsel on the O5 case. What
- 2 happens next week, next month, next year, if it should change,

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- 3 you'll advise me and we'll all come in and talk about it
- 4 again.
- 5 MR. KOUSOUROS: I understand that. I'm simply --
- 6 you're right. I'm simply saying this --
- 7 THE COURT: Mr. Basciano is modding in the
- 8 affirmative, so maybe you ought to talk to him about whether
- 9 you're his lead counsel.
- MR. KOUSOUROS: Now that I have been informed that I

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- 08_02_06_BASCIANO[2].txt can do that, I'll probably do that.
- 12 THE COURT; Do what?
- 13 MR. KOUSOUROS: Talk to him.
- 14 THE COURT: You haven't talked to him?
- MR. KOUSOUROS: Constantly, Judge. Judge, we don't
- 16 need to belabor the point, I'm simply saying --
- 17 THE COURT: I'm trying to get you to say one way or
- 18 the other, just tell me.
- MR. KOUSOUROS: I'm going to say it.
- 20 THE COURT: This is not your letter.
- 21 MR. KOUSOUROS: My point is candor with the court.
- 22 I am lead counsel on the 05 case. I will work on the 05 case,
- 23 not in a limited capacity, 100 percent. When I'm on, I'm on
- 24 100 percent.

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25 I'm simply saying to you that at this point I cannot

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- 1 commit to you, whenever it happens, at this point as I stand
- 2 before you that I'll be trying it, because that's the right
- 3 way to be with the court.
- 4 THE COURT: He may decide he doesn't want you to try
- 5 it. I'm not talking about some event that may take place six
- 6 months or a year from now, I'm only concerned about going
- 7 forward during this critical time that Mr. Basciano have
- 8 active lead counsel on the 05 case during the mitigation
- 9 process.
- 10 You've now told me that you're it. We don't need to
- 11 discuss it anymore. I'm satisfied. It's on the record. You
- 12 made your representation. I don't hear anything else. Let's Page 10

- 13 talk about the issue that brought us here.
- 14 MR. SEIGEL: Your Honor, at this stage, the
- 15 government, because of investigative and security concerns, is
- 16 not in a position to discuss with defense counsel what has
- 17 precipitated Mr. Basciano's placement in the Special Housing
- 18 Unit.
- 19 It's something that is being worked on actively and
- 20 we at a later time will be in a position to say more, but for
- 21 right now, we would be jeopardizing too many things to do
- 22 that.

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- 23 MR. KOUSOUROS: My problem is that as an
- 24 incarcerated detainee, he's got right of access to the courts,
- 25 as the Supreme Court has stated repeatedly --

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- I THE COURT: He's here, isn't he?
- 2 MR. KOUSOUROS: It means access to his counsel and
- 3 that which he needs to prepare a defense, access to the
- 4 courts.
- Again, if the government would permit Mr. Ron Dwyer,
- 6 the investigator, to see him, if he would permit -- right now,
- 7 we are hopefully going to engage Stephanie Kravling to do
- 8 writing for us. I'm simply saying to you, without an
- 9 explanation, without a reason these are -- either his counsel,
- 10 his potential counsel, clearly his investigator who is
- 11 investigating -- as long as they will lighten it up and let
- 12 him see his investigators and let him interview lawyers, he's
- 13 getting what he needs.

08_02_06_BASCIANO[2].txt I would respectfully submit to you that more is 14 15 needed to keep him in the Special Housing Unit. I can't tell you only go so far in certain circumstances. Maybe they can 16 17 tell you, but to simply walk out of the courtroom with just Ephraim Savitt and James Kousouros being able to see him when 18 19 he needs to see his investigators, when he needs to interview 20 counsel, when he's looking at a potential death penalty, when a submission, a supplemental mitigation submission needs to be 21 22 submitted within the next three weeks, every day counts. 23 THE COURT: Let me ask Mr. Savitt a question as 24 learned counsel. 25 Are there necessary visits by other professionals Burton H. Sulzer - OCR, CM, CRR 13 retained by you in connection with the O5 case that are 1 2 necessary between now and the time that you make your 3 submission? 4 MR. SAVITT: Yes. Certainly by Miss Stafford in 5 terms --6 THE COURT: By Miss Stafford? 7 MR. SAVITT: Absolutely. To some extent, the investigator as well. 8 9 Some of the submissions, the supplemental information, will be based on events that obviously transpired 10 **1**1 after the November submission and they will be fact based. 12 MR. SEIGEL: We are willing to speak with the warden 13 about adding Miss Stafford to the list of people that can see

him, but we would like to keep it with attorneys who have

filed a notice of appearance before your Honor at this time.

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- 16 MR. KOUSOUROS: If I can ask you this, Judge?
- 17 THE COURT: Let me, before you ask me, about how
- 18 long do you think it's going to take you to sort out whatever
- 19 this is that you're sorting out?
- 20 MR. SEIGEL: Judge, the answer is we'd like to do it
- 21 as fast as possible and we're working toward that. Some of
- 22 the timing is not completely under our control, so I don't
- 23 want to give an estimate that is too unduly positive, but
- 24 we're working as fast as we can.
- 25 we don't hope that it takes too long before we get

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- 1 to a situation where we can provide some information to the
- 2 defense, but we're just not there yet.
- 3 THE COURT: Go ahead.
- 4 MR. KOUSOUROS: Well, I'm really -- I appreciate
- 5 that they are going to hopefully have Miss Stafford back in as
- 6 she is certainly indispensable here.
- 7 I'm not -- respectfully, Judge, I'm not satisfied
- 8 otherwise and if the government cannot tell us, I want them to
- 9 tell you in camera. I certainly trust the court's judgment,
- 10 because I have to say, one of -- Mr. Owyer meets -- I go there
- 11 every Friday, we meet, we are conducting an investigation.
- 12 We're doing the best that we can to do it all on that day. I
- 13 have to tell you, I'm leaving for two weeks in August. I want
- 14 these --

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- 15 THE COURT: When are you leaving?
- 16 MR. KOUSOUROS: August 13th.

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08_02_06_BASCIANO[2].txt
THE COURT: Then you can come back here on 17 August 11th -- we may see where we are on August 11th, at 18 19 noon. 20 MR, KOUSOUROS: Would you be kind enough --21 THE COURT: Unless the matter is resolved before then, in which case -- when I say resolved before that, unless 22 you're advised as to what the circumstances are before that 23 and you feel that there's not a need to have such a status 24 conference or if the matter is resolved --25 Burton H. Sulzer - OCR, CM, CRR 15 l MR. SEIGEL: That is nine days from now, We will do 2 our best. We may not be in a position yet to reveal information. 3 4 THE COURT: If it's not resolved, you'll tell me. If it is resolved you'll tell me. If you don't need a status 5 conference you'll tell me in advance. Call Mr. Recoppa and 6 you won't produce Mr. Basciano and that will be it. 7 8 At this moment, I believe that in order to keep a close eye on this, and by virtue of the fact that we still 9 10 don't know for sure whether Miss Stafford will be permitted in there by the warden, I'd like to have that status conference 11 12 on the 11th of August when I will be here. 13 I strongly recommend that the warden make that 14 revision in his order. 15 MR. SEIGEL: Yes, Judge. 16 THE COURT: All right. Anything else? 17 MR. KOUSOUROS: Here's the only other thing. 18 August 11th is nine days from now. There's an indication it Page 14

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- 19 may not be resolved. I still respectfully ask that the court
- 20 be provided with the information in camera so that on
- 21 August 11th, should the government tell you it's not resolved,
- 22 perhaps the court would be in a position to resolve some of
- 23 it, at which point the court might be on August 11th having
- 24 knowledge of what's going on say, Look, you got to let lawyers
- 25 in. You have to let the investigator in.

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- Even if, for example -- while we certainly hope that
- 2 is not the case, even if the SHU issue is not resolved, we
- 3 don't want you to get the information on the 11th and have to
- 4 hastily make a decision. We should have the information so
- 5 perhaps on the 11th you'll be prepared.
- 6 THE COURT: I won't make any hasty decisions and the
- 7 government, I expect the government to keep me informed as
- 8 must as possible and --
- 9 MR. \$EIGEL: We will do that.
- 10 THE COURT: We'll see where we are on August 11th.
- 11 Anything else? Mr. Savitt?
- MR. SAVITT: Your Honor, not at this point.
- 13 MR. KOUSOUROS: Does Mr. Basciano need to stay in
- 14 Special Housing at this time?
- 15 MR. SEIGEL: Yes.
- MR. KOUSOUROS: I would also ask the court to direct
- 17 the government that on the 11th that issue be addressed as
- 18 well.
- 19 THE COURT: You can raise any issues you want when

you're in front of me on August 1Ith. Whatever issues still exist, you can always raise them before me on August 11th and I will be happy to hear from you and hear from the government on any open issues. Thank you very much. Have a nice day.

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METROPOLITAN CORRECTIONAL CENTER, NEW YORK ADMINISTRATIVE REMEDY PROCEDURE FOR INMATES

INFORMAL RESOLUTION FORM (BP-8)

NOTE TO INMATE: With the exception of sensitive issues and DHO appeals, you are advised that prior to receiving and filing a Request for Administrative Remedy Form BP-229(13) (old BP-9), you MUST attempt to informally resolve your complaint through your correctional counselor. Additionally, in accordance with P.S. 1330.13, you have the responsibility to present complaints in good faith and in an honest and straightforward manner. Before completing this form, you should make every effort to honestly attempt to informally resolve this matter verbally with staff. Briefly state ONE complaint below and list what efforts you have made to resolve your complaint informally.

informally.
Date form issued and initials of Corr. Counselor: (8306
INMATE'S COMMENTS:
1. Complaint: In count the Prosecular Winston chan sais I
must go though my Dominshanding Remedies First T world
The for Know why I'm in the SHV. Am T wast not to
2. Efforts made by you to informally resolve: I Don't Knew why I'm here
3. Names of staff you contacted/Date you contacted the staff: Cancelor Graner Tre notes are the building Date returned to Correctional Counselor: Incent To Baselow 30694-054 8/13/06 Inmate's Name Register Number Date
CORRECTIONAL COUNSELOR'S COMMENTS:
1. Efforts made to informally resolve and staff contacted: according to correctional services this because of security appears, you are housed mother special
Date informally resolved: Counselor Signature: \$200k
Date BP-229(13) Issued:
Unit Manager; More

JAMES KOUSOUROS

Attorney at $L_{\rm AW}$

80-02 Kew Gardens Road, Suite 1030, Kew Gardens, New York 11415 718-575-5450, 4131 · 718-793-0165 fax Email; JK5665@aol.com

July 31, 2006

Honorable Nicholas G. Garaufis United States District Judge Eastern District of New York 225 Cadman Plaza East Brooklyn, New York 11201

> Re: United States v. Vincent Basciano, 05 CR 0060 (S-6) (NGG)

Dear Judge Garaufis;

We are submitting the following letter-brief in advance of the conference scheduled for August 11, 2006 to discuss and hopefully resolve Mr. Basciano's present detention status.

As the court is aware, the government has, without explanation, completely isolated Mr. Basciano, prohibiting all telephone calls and visits in conjunction with having placed him in the Special Housing Unit of the Metropolitan Detention Center. At the request of counsel, this court held a brief hearing on August 2, 2006 to address this matter. During the hearing, the government refused to disclose the reason for the isolation of Mr. Basciano, but did agree that the undersigned and Ephraim Savitt, learned counsel, were now authorized to see Mr. Basciano, who to that point had been prevented entirely from meeting with counsel. The government also agreed to permit Ying Stafford Esq., assigned to assist Mr. Savitt in the death penalty litigation, to resume meeting with Mr. Basciano. However, the restrictions on all telephone privileges and the limited visitation he had been permitted with his wife continue unabated. As a consequence, we now move, pursuant to 28 U.S.C. § 2241 and the Bail Reform Act contained in 18 U.S.C. §3142 for an Order directing the government and the Bureau of Prisons to release Mr. Baseiano from administrative detention at the Metropolitan Correctional Center and return him to general population. The conditions under which Mr. Basciano is currently being detained are deplorable and intolerable. These conditions have thwarted counsel's ability to effectively prepare for the upcoming trials and to consult with Mr. Basciano concerning the death penalty litigation currently in progress.

Low Office of James Koussuras

In an Order filed on May 5, 2005 releasing Mr. Basciano from the very same Special Housing Unit, this court detailed the conditions to which we refer:

Unit 10 South is considered to be the most secure housing available at any Bureau of Prisons (BOP) facility in the New York City metropolitan area, and is generally reserved for terrorism suspects, detainees who have shown themselves to be a danger to other inmates and/or prison guards, and cooperating witnesses. Detainees in 10 South are confined to cells with blacked out windows 23 hours per day during the week, and round-the-clock on weekends. Despite representations from the government that the lights in the SHU can be turned off, Basciano asserts that the lights are left on 24 hours a day. Access to radios, and reading materials, including legal papers, appears in practice to be quite limited. Meals are received on trays that are pushed through a narrow slot in the cell door. Finally, and perhaps most significantly, Basciano's contacts with other human beings have been sharply curtailed. He receives only one social visit per week, is not permitted to speak to anyone while in his celf, and his telephone privileges are described by his counsel as 'nonexistent'.

Memorandum and Order, May 5, 2005, pp.2-3.

While many of this court's observations continue to apply with equal force, the conditions in the "SHU" have worsened. Mr. Basciano is permitted no legal papers, and is thus unable to knowledgeably discuss the previous proceedings, the upcoming trial or, of utmost significance, the issues pertaining to the death penalty litigation currently in progress. As for his access to contact with other human beings, Mr. Basciano has been denied all visitation other than the three attorneys now permitted to meet with him. He is not allowed any telephone calls. Moreover, these onerous conditions have been exacerbated by the sweltering heat that has befallen New York City this summer. As of the filing of this submission, Mr. Basciano has been in the "SHU" for more than one week and he has lost several pounds. The temperature is unbearable. When the undersigned visited with Mr. Basciano on August 3, 2006, the latter entered the visiting room sweating, pale and drawn. He had none of his legal papers and the discussion was demonstrably less productive and informative.

When the court was last called upon to address the government's decision to isolate Mr. Basciano in this manner, the matter was litigated for several weeks. Mr. Basciano remained in the SHU for months, until this court found the government's reasons for the complete segregation to be unnecessary, and in conflict with Mr. Basciano's ability to assist in his defense. We ask that this court act without delay and not permit this situation to persist indefinitely. It is one thing for the government to take this action, with proper and informed notice so that the matter can be litigated properly, but another for them to clandestinely deprive the defendant of the due process to which he is entitled. Indeed, we cannot even address the merits of this sudden and unannounced movement of Mr. Basciano, as the government has refused to disclose the ostensible reasons therefor.\(^1\) Mr. Basciano has not yet

We are mindful of the analysis delineated in <u>Belt v Wolfish</u>, 441 U.S. 520 (1979) to determine whether the action is punitive or "an incident of some other legitimate governmental purpose" (id. At 538-539). We are unable to even

been sentenced and accordingly, no judgment of conviction has been filed or entered. He is still preparing for the re-trial of serious substantive charges, and a discrete trial on yet other serious charges. Mr. Basciano was currently in the midst of preparing, together with counsel, supplemental mitigation submissions concerning the government's decision as to the applicability of the death penalty on 05-Cr-0060. As such, his status as a detained under the Constitution remains unchanged. As a pre-trial detained, Mr. Basciano is entitled to his full panoply of constitutional rights. Willis v Artuz, 301 F.3d 65 (2d Cir. 2002); cf. Hewlett v Holmes, 459 U.S.460 [administrative detention of a sentenced inmate charged with participation of a prison riot in which serious injuries were sustained by prison staff upheld where security threat amply established at a hearing];

The conditions outlined above, the manner in which they were imposed, and the government's obvious position that they will dictate when and for how long this segregation will continue, constitute cruel and unusual punishment violative of the Eighth Amendment to the United States Constitution. Mr. Basciano's ability to assist in his defense on the re-trial, the trial to follow, and most importantly, the submissions relative to the government's recommendation concerning the death penalty are severely compromised. As such, his segregation under these conditions constitutes a violation of his Fifth and Sixth Amendment rights.

In its 2005 order, the court made the following observations, which we submit, resound most clearly to the present situation:

The foremost factor informing my conclusion is the reality that Basciano is a death-eligible defendant whose attorneys are now preparing to make a mitigation submission to the Attorney General. It is therefore of the utmost importance that Basciano be capable of working with his attorneys as they attempt to dissuade the Attorney General from seeking the death penalty against him. Yet Basciano's detention in the SHU presents both practical and psychological obstacles to this result. As a practical matter, the security restrictions in place in the SHU make it much more difficult for Basciano to have productive meetings with his counsel, as Basciano's attorneys have credibly argued.

Memorandum and Order, 05-CR-0060 (NGG), pp. 12-13)(emphasis added).

In addition to the practical limitations on the effective exercise of his right to counsel, the court also considered factors of a more nuanced nature:

More importantly, it is well documented that long periods of solitary confinement can have devastating effects on the mental well-being of a detainee. See, e.g., Craig Haney & Mona Lynch, Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement, 23 N.Y.U. Rev. L. & Soc. Change 477, 531 (1997) ("Direct studies of the effects of prison isolation have documented a wide range of harmful psychological effects, including increases in negative attitudes and affect, insomnia, anxiety, panic, withdrawal, hypersensitivity,

ruminations, cognitive dysfunction, hallucinations, loss of control, aggression, rage, paranoia, hopelessuess, lethargy, depression, emotional breakdowns, self-mutilation, and suicidal impulses...There is not a single study of solitary confinement wherein non-voluntary confinement that lasted for longer than 10 days failed to result in negative psychological effects"). Taken together, the urgency of Basciano's need to marshal his legal defense in the hopes of avoiding a death-penalty trial and the likely effect of continued solitary confinement on Basciano's mental state require that the government reserve the "nuclear option" of indefinite confinement until it is clear that less restrictive options have failed to constrain Basciano.

Id, (emphasis added)

The current situation is no less urgent despite the lesser period Mr. Basciano has been confined in the "SHU." At this moment, the government is preparing and submitting it's recommendation concerning the imposition of the death penalty to the Attorney General, in keeping with the August 21, 2006 deadline. Mr. Basciano and counsel were preparing a supplemental mitigation submission in an effort to convince the government to not recommend death as a penalty. It is inconceivable that our system of justice can permit the government to impose a "nuclear option" of incarceration upon a pretrial detainee at the same time the very same defendant must feverishly work with counsel to convince the government to not seek an option of an even greater incendiary nature – death – as a sentence.

The Supreme Court has made all too clear that in a capital case, counsel must investigate and pursue every arguably mitigating factor which exists on behalf of a client. Wiggins v Smith, 539 U.S. 510 (2003). The pursuit of mitigation is an ongoing and evolving process. In this case, the initial submission was made prior to the first trial of indictment 03-CR-929. The current submission is after the trial of a separate matter, in which Mr. Basciano was convicted of serious charges and thus faces a significant prison sentence. Therefore he now faces a heretofore unanticipated re-trial, in addition to the later trial for which the death penalty is a potential sentence. These facts present additional issues of mitigation as they relate to Mr. Basciano and his wife and children.

Additionally, as the court is aware, other issues have arisen concerning the credibility of Joseph Massino, which are the subject of a second submission relating to the events which precipitated the tape recorded in-prison conversations between Mr. Basciano and Massino.² The analysis of this information requires the attentive and productive participation of Mr. Basciano, as these conversations must be re-analyzed in light of the revelations concerning Massino. These issues must also be addressed in the defense mitigation submission not only in terms of Massino's credibility, but also in terms of Massino's status as an "equally culpable defendant" within the ambit of § 3592(a)(4).

In conclusion, Mr. Basciano's need to confer with counsel, to meet with his wife, and in truth,

² In a separate submission filed on this day, the defense requested an Order directing the government to provide all relevant materials pertaining to a lie detector test administered to Massino after his offer of cooperation to the government. Upon information and belief, Massino failed the lie detector test and after being rejected by the government, he convinced the government to equip him with a wire, while in prison, to tape conversations with Basciano and thus deliver the goods on Basciano and receive consideration from the government in the form of his life and some of his money.

to be treated as a human being while a detained pending trial and possibly death, mandates that he be released from the Special Housing Unit at the MCC and returned to population. Additionally, and in order to prevent such abusive action in the future, we ask that if and when the government intends to repeat such action, that appropriate notice be given to the court, and then if the court deems it appropriate, to counsel, so that these issues can be addressed without unwarranted delay.

Respectfully submitted.

JAMES KOUSOUROS

Cc; Thomas Siegel
Winston Chan
Greg Andres
Assistant United States Attorneys

Ephraim Savitt, Esq.

Ying Stafford, Esq.

Vincent Basciano

Unit Manager:

KKMLTLAWOFFICES

PAGE 02



METROPOLITAN CORRECTIONAL CENTER, NEW YORK ADMINISTRATIVE REMEDY PROCEDURE FOR INMATES

INFORMAL RESOLUTION FORM (BP-S)

NOTE TO INMATE: With the exception of sensitive issues and DHO appeals, you are advised that prior to receiving and filing a Request for Administrative Remedy Form BP-229(13) (old BP-9), you MUST attempt to informally resolve your complaint through your correctional counselor. Additionally, in accordance with P.S. 1330.13, you have the responsibility to present complaints in good faith and in an honest and straightforward manner. Before completing this form, you should make every effort to honestly attempt to informally resolve this matter verbally with staff. Briefly state ONE complaint below and list what efforts you have made to resolve your complaint Date form issued and initials of Corr. Counselor_ INMATE'S COMMENTS: 1. Complaint: In the Proventon 70 700 1000 · 2. Efforts made by you to informally resolve: I bont Voer who 3. Names of staff you contacted/Date you contacted the staff: camal or Surrez I've Askes aren Date returned to Correctional Counselor: Register Number CORRECTIONAL COUNSILOR'S COMMENTS: 1. Efforts made to informally resolve and staff contacted: according to cornelional Date informally resolved: Counselor Signature: Date BP-229(13) Issued:

Case 1:07-cv-00224-NGG-RML "Document 1-3 Filed 01/09/07 Page 32 of 103 PageID #_83

U.S. DEPARTMENT OF JUSTICE

REQUEST FOR ADMINISTRATIVE REMEDY

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are	needed, submit four copies.	Additional Instructions o	n reverse.
From: BASCIANO, VINCENT, J.	_		
LAST NAME, FIRST, MODEL INITIAL	30694-054	9-5 G	<u>M.C.C.</u>
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DAIR		ASIGNATURE OF REQU	ESTER
Part B- RESPONSE			

DATE DATE One of the Regional Director: Your the dissatisfied with this response, you may appeal to the Regional Director: Your	WARDEN OR REGIONAL DIRECTOR appeal must be received in the Regional Office within 20 calcular days of the date of this response.
ORIGINAL: RETURN TO INMATE	CASE NUMBER:
Part C- RECEIPT	CASE NUMBER:
Return to: LAST NAME, FIRST, MIDDLE INITIAL	REG. NO. UNIT INSTITUTION
SUBJECT:	

C.. Lilia A

REJECTION NOTICE - ADMINISTRATIVE REMEDY

DATE: AUGUST 2M 2006

FROM: ADMINISTRATIVE REMEDY COORDINATOR

INSW YORK MCC

· VINCENT JOHN BARCHANO, 39/894-054 TO

NEW YORK MCC UNT: 11 QTR: Z01-953LAD

150 PARK ROW

NEW YORK, NY 10007

FOR THE REASONS LISTED BELOW, THIS ADMINISTRATIVE REMEDY REQUEST IS BEING REJECTED AND RETURNED TO YOU. YOU SHOULD INCLUDE A COPY OF THIS NOTICE WITH ANY FUTURE CORRESPONDENCE REGARDING THE REJECTION.

REMEDY ID : 424811-F1 ADMINISTRATIVE REMEDY REQUEST

DATE RECEIVED : AUGUST 24, 2006

SUBJECT 1 : ADMINISTRATIVE DETENTION - PLACEMENT, REVIEWS, RELEASE

SUBJECT 2 INCIDENT RPT NO:

REJECT REASON 1: YOU DID NOT ATTEMPT INFORMAL RESOLUTION PRIOR TO SUBMISSION OF ADMINISTRATIVE REMEDY, OR YOU DID NOT PROVIDE THE NECESSARY EVIDENCE OF YOUR ATTEMPT AT INFORMAL RESOLUTION.

REJECT REASON 2: YOU MAY RESUBMIT YOUR REQUEST IN PROPER FORM WITHIN 5 DAYS OF THE DATE OF THIS REJECTION NOTICE.

: YOU MUST SUBMIT YOUR INFORMAL RESOLUTION (BP8) REMARKS WITH YOUR ADMINISTRATIVE REMEDY.

* INMATE RECEIVED THIS NOTICE ON AUGUST 27, 2006

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                  UNITED STATES DISTRICT COURT
                  EASTERN DISTRICT OF NEW YORK
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       UNITED STATES OF AMERICA, :
                                        05-CR-060(NGG)
 4
 5
             -against-
                                        United States Courthouse
 6
                                        Brooklyn, New York
 7
 8
      VINCENT BASCIANO.
                                        August 28, 2006
                                        11:00 a.m.
 9
               Defendant.
10
11
               TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
                   BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
12
                          UNITED STATES DISTRICT JUDGE
13
                              APPEARANCES:
14
     For the Government: ROSLYNN R. MAUSKOPF, ESQ.
                         United States Attorney
15
                         Eastern District of New York
                              one Pierrepont Plaza
16
                              Brooklyn, New York 11201
                         BY: WINSTON CHAN, ESQ.
17
                             Assistant United States Attorney
     For the Defendant:
18
                         JAMES KOUSOUROS, ESQ.
                         EPHRAIM SAVITT, ESQ.
19
                         STEPHANIE, CARVLIN, ESQ.
                         YING STAFFORD, ESQ.
20
    Court Reporter:
                      Anthony D. Frisolone, CSRR, RMR, CRI
21
                      Official Court Reporter
                      Telephone: (718) 613-2487
22
                      Facsimile: (718) 613-2694
                      E-mail:
                                AFrisolone@aol.com
23
    Proceedings recorded by computerized stenography. Transcript
24
    produced by Computer-aided Transcription.
25
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Status Conference 2 1 2 (In open court.) 3 (Defendant enters the courtroom.) 4 COURTROOM DEPUTY: Criminal cause for status 5 conference, United States versus Vincent Basciano. 6 Counsel state your appearances for the record. 7 MR. CHAN: Winston Chan for the United States. Good 8 morning, Your Honor. 9 MR. KOUSOUROS; James Kousouros for Mr. Basciano. 10 MR. SAVITT: Ephraim Savitt for Mr. Basciano. 11 MS. CARVLIN: Stephanie Carvlin for Mr. Basciano. 12 THE COURT: Did you put in a Notice of Appearance? 13 MS. CARVLIN: Edid, Your Honor. 14 MS. STAFFORD: Ying Stafford for Mr. Basciano. 15 THE COURT: Good morning Mr. Basciano. 16 THE DEFENDANT: Good morning. 17 MR. CHAN: I think we're here on the second status 18 conference on the issue of Mr. Basciano's placement in the SHU 19 which was exactly 30 days ago from this day. At this time, the Government is prepared to make a very limited disclosure 20 about the basis for that placement in the SHU in writing to 21 22 them under seal on the condition that the defendant and his 23 four attorneys each represent to the Court that the 24 information they receive today they will not disclose to 25 anyone other than each other until the investigation that is

Status Conference

the subject of his placement becomes finalized.

MR. KOUSOUROS: We have discussed this as counsel along with Mr. Basciano. We need to see the letter, but certainly, we have no problem with that. We will not disclose the contents of that letter to anybody, we will only discuss it amongst ourselves. That includes the investigators and anyone else involved with the case.

THE COURT: That includes, meaning, you're not going to discuss it with the investigators.

MR. KOUSOUROS: They're not going to discuss it with the investigators.

THE COURT: The only people who know about it for the defense are the five people standing in front of me.

Mr. Basciano, you agree to that?

THE DEFENDANT: Yes, Your Honor.

MR. CHAN: That's fine, Your Honor.

I will say on the record that the nature of the investigation involves threats of violence by Mr. Basciano against individuals during the course of his previous trial.

MR. KOUSOUROS: Your Honor, we are -- we have been fighting for a month now to find some information out, so obviously, we're pleased to know something.

What remains, however, is the fact that what you have are just allegations that were either apparently made or an investigation began somewhere at the end of July and we

Anthony D. Frisolone, CSRR, RMR, CRI

Status Conference 4 still must insist, to the extent possible, on a resolution. 1 2 Mr. Basciano was taken out of his cell last week, they told him they were taking him to a different area. Instead, they 3 took him to a cell that had just been vacated by somebody, 4 5 shall we say, who had had some issues and had deposited feces 6 and urine all over the walls and that's the cell that 7 Mr. Basciano was taken to within the context of his special 8 housing confinement. They then brought him cleaning materials 9 and told him to clean it up. 10 The Government has a right to investigate 11 allegations, we've been saying that since the beginning. The 12 problem is while we're getting some limited disclosure here. 13 he remains in a special housing unit. 14 THE COURT: Is he alone in this cell? 15 MR. KOUSOUROS: He was alone in this cell? 16 THE COURT: Was he alone in the prior cell? 17 THE DEFENDANT: Yes. 18 MR. KOUSOUROS: Yes. 19 The conditions are unbearable and I don't know what 20 this letter says, I don't know that it's going to give us 21 enough information to come to you and ask for a hearing but --22 THE COURT: Are you prepared to give them the letter 23 now? 24 MR. CHAN: Yes. 25 THE COURT: Well, I tell you what, why don't you

Status Conference 5 look at the letter. 1 2 MR. KOUSOUROS: Great idea. 3 MS. CARVLIN: Thank you. 4 THE COURT: Why don't you come back, you can't discuss the letter in public, but if there are steps you want 5 6 me to take after you read the letter you tell me what they are 7 without making any reference to the letter and I'll get to see the lotter as well i'm most interested in seeing the letter. 8 9 MR. KOUSOUROS: Will we be able to do that today? 10 MR. SAVITT: Hopefully, 11 THE COURT: Do it at noon. I'm not going to wait. 12 Why should I keep everybody in suspense. 13 MR. CHAN: So we're clear, Judge, if we do discuss at another court date today or in the future I ask that all 14 15 filings be under seal. 16 MR. KOUSOUROS: Absolutely, 17 THE COURT: All the filings will be under seal. If the issue that you have is as to his the conditions of his 18 19 confinement separate and apart from any allegations 20 involving -- what did you say -- I don't want to misspeak. 21 MR. CHAN: Threats of violence against persons 22 somehow related to the last trial in which he was a defendant. 23 THE COURT: Then as long as you don't discuss the contents of the letter or how it applies to any individuals or 24 25 entities then we can have that discussion publicly. If you

Status Conference 6 want to start talking about what's in the letter, then it has 1 2 to be done in camera. 3 MR. KOUSOUROS: No problem. 4 THE COURT: Not ex parte in camera because I'm not having any ex parte discussions with the defense. 5 6 MR. CHAN: Okay. 7 THE COURT: All right. So, why don't you distribute 8 the letter and give the Court a copy and we'll reconvene at 9 I'll ask the marshals to make a location available in 10 an interview room with Mr. Basciano to meet with his group of 11 attorneys. 12 MR. CHAN: Thank you, Judge, 13 THE COURT: Thank you. 14 (Case laid aside; later recalled.) 15 (In open court.) 16 THE COURT: Be seated. I want everyone here to 17 start. 18 (Defendant enters courtroom.) 19 COURTROOM DEPUTY: Criminal cause for status conference, United States versus Vincent Basciano. 20 21 Counsel state your appearances for the record. 22 MR. CHAN: Winston Chan for the United States. 23 MR. KOUSOUROS: James Kousouros for Mr. Basciano. 24 MR. SAVITT: Ephraim Savitt for Mr. Basciano. 25 MS. STAFFORD: Ying Stafford for Mr. Basciano.

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Status Conference

MS. CARVLIN: Stephanie Carvlin for Mr. Basciano.

THE COURT: Did you want something, Mr. Kousouros?

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MR. KOUSOUROS: Yes, Judge, we would respectfully ask you to meet with us in camera. We believe that it is of the utmost urgency that we do so that we can hopefully facilitate a resolution to this situation for many reasons which, you know, just assume do in camera. If you're willing to hear us parse what we say and don't say on the record in public.

MR. CHAN: Judge, I would say that if the defendant is making that motion the Government doesn't oppose it. to the extent that we can tailor any sealing reasonably so that if there are things that could be discussed on the record we should do that now and not seal the entire proceeding because I think we should try to tailor the sealing as necessary.

MR. SAVITT: Your Honor, could we make that decision after we've had the in camera discussion?

THE COURT: Well, that's possible. I'm extremely mindful of the importance of operating in the daylight, in open court, and having read the document that I just read and the attachments. It would seem to me that at some point this whole whatever-it-is should be publicly disclosed sooner rather than later, but it depends on the completion of the Government's investigation and I will hold the Government's

Status Conference

feet to the fire in terms of getting it done as quickly as possible so that that which can be placed on the public record at the earliest possible time.

I've already told the Government this when I was first advised of this investigation. I'll seal the courtroom, we can do it right here and I'm going to have everyone leave the room who isn't associated with the parties and we'll just do it right here, I'm not planning to move, and then we'll reopen the courtroom and anything that has to go on the public record will then go on the public record.

I am going to make it very clear that you should be very careful about what you want to discuss in private because unless it relates to, unless it relates to those matters which are sensitive as to public safety and security, they should really be discussed in public.

So that's my position on that, and I will also indicate that the Court has reached an independent conclusion for those who are concerned that it is not necessary to close the proceeding.

The Court has reached an independent conclusion based on what it knows from the filings and from the briefings that the Court has received in camera, ex parte, from the Government that this issue involves the safety of people, potentially; and it's my understanding that the Government is not undertaking or has undertaken a significant investigation

Status Conference

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which ordinarily no one would know about but for the fact the precise nature of this problem.

Did I say it more or less correctly, Mr. Chan, as to memorializing what's transpired thus far and what your position is, generally, as to the need to seal the record of the proceeding we're about to have.

MR. CHAN: Yes, Judge. Hundred percent correctly.

THE COURT: Does the press have something it wants to place on the record?

MR. DiSTEFANO: Should I come up?

THE COURT: You can come back because I always want to hear what the The Fourth Estate has to say.

Yes, sir,

MR. DISTEFANO: Tony DiStefano of Newsday.

Just for the record. Your Honor, we would object, of course, to a sealing of the entire proceedings but it seems from what Your Honor has said, and what the Government's position is, is a substantial body of the proceedings that can be discussed in public. We just want to remind the Court that, you know, under the Second Circuit law that there has to be some sort of substantial showing of a substantial harm or overriding public interest that would necessitate sealing parts of the proceeding or all of the proceeding and being in the dark, like most of the public is, on this we would just put that on the record that we object to, of course, sealing

Status Conference (Sealed Portion) 10 of everything and we ask the Court to use its fundamental 1 2 discretion to see if there is any standing probability of harm 3 that requires any sort of sealing and that be made. 4 THE COURT: Let me just say on the open record that the nature of this issue is such that it would be very clear 5 6 to you, it will be very clear to you eventually, and would be very clear to the Court of Appeals, that the subject matter of 7 this proceeding is extremely security sensitive involving 8 9 possible harm to individuals and that's the nature of it. 10 What comes of it, if anything, is an open question, 11 but the assertions that are made in the Government's 12 submission is such that the Court reaches that conclusion 13 reluctantly but quite conclusively. 14 MR. DiSTEFANO: What I'm saying is if you can tailor 15 any sealing or the courtroom to a minimum. 16 THE COURT: I will seal only that which needs to be sealed for public safety and security. 17 18 THE WITNESS: Thank you. 19 THE COURT: Thank you. I'm going to seal the courtroom and we'll continue and then we will resume in open 20 21 court. 22 (Continued on next page.) 23 24 25

Status Conference (Sealed Portion) 11 1 (SEALED PORTION OF TRANSCRIPT) 2 (Courtroom sealed; attorneys for the Government and 3 defense along with the defendant are present.) 4 THE COURT: All right. Let's go. This is a sealed proceeding subject to later motion or application for the 5 record to be unsealed under the appropriate circumstances. 6 7 Mr. Kousouros, 8 MR. KOUSOUROS: If it please the Court, Your Honor, 9 we received a letter dated August 28th, today, essentially. Attached to that letter are several handwritten notes, a 10 11 couple of which we believe we used for comparison for handwriting analysis. But the notes that we're most concerned 12 13 with is one which has a list of individuals: You, an 14 Assistant United States Attorney, and three witnesses that testified at the trial. Your Honor, we are so concerned that 15 already even what's been made public is going to so poisonous 16 17 the jury pool that we are respectfully submitting to you that a hearing be conducted immediately; and we're going to be more 18 up front than normal. Normally, you sit on things, you think 19 20 about them, but here's the situation, Judge: There's a note; 21 there are four names on it. 22 THE COURT: I thought there were five names. 23 MR. KOUSOUROS: Five names. 24 THE COURT: Let's not miss anything. 25 MR. KOUSOUROS: There are five names on that list,

Status Conference (Sealed Portion)

Judge, and the Government -- basically, it's an innocuous list. There is a list with names on it. There is no message on the list, however, the Government has maintained in that letter of August 28th that accompanying that list Mr. Basciano gave it to an inmate and indicated to that inmate that he sought the murder of the individuals on that list.

We submit to you that if you hold a hearing now without any preparation by us, if you have the inmate brought in, we will prove to you that there is nothing of the sort going on; that, the explanation is simple and that it's provable. And if it's not, then we lose but it needs to be addressed not only because the man is in the conditions that he's in.

Those now take a back seat to issues that are even of more paramount importance. But let me just go to these allegations. This inmate, the person we believe to be this inmate, is somebody who approached our client and told him that his mother is some priestess for Santa Maria.

MS. CARVLIN: Santeria.

MR. KOUSOUROS: And told Mr. Basciano to make a fist of everybody involved, put it in your right shoe, stamp five times every day during the trial, and it will help.

We can prove to you through other witnesses and independent corroborative evidence that this is what this note is. And, instead what's going on, aside from the fact that

Status Conference (Sealed Portion)

he's in a feces-ridden cell, we now have an entire five rows of press or how many people are out there walking around thinking that three months before the commencement of a retrial Vincent Basciano was threatening to kill people.

We can prove it to you independently, is what we submit. This Thursday, the Eastern District of New York is going to make its internal decision as to whether to seek the death penalty. We only know what's in this note and we have not been able to go any further in terms of addressing it.

So, the Eastern District of New York, I would assume, as learned counsel cortainly has the experience to say, if there were ever an allegation that would point towards seeking the death penalty, a conspiracy to kill a Judge, prosecutor, and witnesses, ranks pretty high up on there in addition to the death eligible homicide that we're talking about. But we can't address it because it's not being aired and Mr. Chan has made clear that their internal deadline of this Thursday will be kept.

A submission was made by the defense last week, obviously it doesn't include any of this, and the fact that we're going to be given an opportunity to go down to Washington and make a personal pitch, well, we submit that it is an issue of constitutional dimension that we not have to wait until an entire government's mind is made up to seek the death penalty to then go and unring that bell and seek to

Status Conference (Sealed Portion)

convince them not to because the allegations which were made part of the convincing presentation were nonsense.

I don't take this lightly, ever, an allegation like this. When I use the word "nonsense" if, in fact, we prove to you what we think we can prove to you that's what they are. We take this as seriously as anything could possibly be taken. But, at this point, after the man has been in the SHU for a month, can't see his private investigator and give him whatever personal direction he needs. When lawyers have to jump through hoops to get in to see him. Ms. Carvlin did not get in to see Mr. Basciano last week, for whatever reason her name wasn't or wasn't right part of whatever list is involved.

We have a right, he's got a right to the effective assistance of counsel for his upcoming trial. He's got a right to effective assistance of counsel in the determination process for the death penalty. And, Judge, we're telling you that the Government should bring this inmate in for an in camera hearing as private and secret as it needs to be under the law and let us prove to you that there is no such conspiracy; that there is no such danger to anybody or not but give us that opportunity.

THE COURT: Is there anything else?

MR. KOUSOUROS: There are independent witnesses and there is independent corroboration in terms of locations which can be proven and shown to you that will be brought to you

Status Conference (Sealed Portion) 15 1 during this hearing. THE COURT: All right. Thank you. 2 3 MR. CHAN: Judge, I'm not going to comment on anything more than what's inside the letter. It's a 4 5 continuing investigation. 6 I think that there are really two issues that Mr. Kousouros brought up here. First, the defendant wants to 7 challenge the conditions of his confinement and second --8 9 THE COURT: I can deal with the conditions of his 10 confinement. 11 MR. CHAN: Right, we can have --12 THE COURT: We'll do that in public. 13 MR. SAVITT: Right. 14 MR. CHAN: There is the normal process in that is for the first -- first of all, to seek administrative relief 15 and then to file a 2255. Even in that process I'm not sure 16 that the Government is obligated to put its witness on the 17 18 stand. I think that the Government is entitled to other ways 19 of making its submission to the Court for the Court to make its determination about the reasonableness of those conditions 20 21 of confinement. 22 So, that process can continue, they can do what they 23 have to do, and they can file the motion and we can have 24 litigation about that. 25 In terms of a deadline for the U.S. Attorney's

Status Conference (Sealed Portion) 16 1 office, it's our internal deadline; that's when we're going to have our own internal meeting and a determination is going to 2 3 be made. 4 THE COURT: You will accept an additional 5 submission? 6 MR. CHAN: Sure, they can make submissions whenever. 7 They've aiready made two. 8 THE COURT: There's no constitutional requirement that this process occur, as I understand it, before the 9 10 Attorney General makes this decision. It's an administrative 11 process that the Justice Department goes through, you're not 12 necessarily entitled to a hearing. You're not -- and correct me if I'm wrong -- but, certainly, if allegations have been 13 made, you're certainly -- or if it appears that there are 14 15 allegations as to some other improper activities by the defendant -- you certainly should have the opportunity to 16 17 provide whatever additional written submission you want to the 18 U.S. Attorney and let that be taken into consideration as 19 well; and the matter is going to go to the Justice Department 20 by the end of the week and you'll be able to make that submission also to the Justice Department and bring it up at 21 22 any meeting in Washington and it would seem that that's how it 23 ought to be handled. 24 MR. CHAN: That's correct, Judge. Just like when

MR. CHAN: That's correct, Judge. Just like when the Government chooses not to indict someone, that's purely an

25

Status Conference (Sealed Portion) 17 1 executive function that does not create rights for the 2 defendant. MR. SAVITT: Your Honor, may I speak to this because 3 these are obviously as serious an allegation or allegations as 4 5 can possibly be made in a case and nobody takes anything like that lightly. 6 7 But, to be totally forthcoming, I believe that under these circumstances where the committee in the U.S. Attorney's 8 Office is about to make a determination as to what to 9 recommend to the Attorney General, we have to act quickly here 10 11 on the defense part and we are willing, perhaps uncharacteristically so, to assist the Government in its 12 investigation, and there is a witness outside this courtroom 13 14 with whom we did not speak: Mr. Basciano's wife who knows the genesis of this list. It's not the only list that exists; we 15 have not spoken to her, and we don't have any objection to the 16 17 Court speaking to her in the presence of counsel or to 18 Mr. Chan speaking to her. 19 THE COURT: Don't you understand I'm not an 20 investigator. 21 MR. SAVITT: I understand that, Judge. 22 THE COURT: It's not my job, it's their job, the Government's job, and I'm not about to take up their 23 24 responsibility. 25 I've reached no conclusions about what's here but

Status Conference (Sealed Portion)

the Government is investigating what appears to be a very serious security issue and they have received this list from someone, apparently, and they're looking into it; and the handwriting I'm advised, is Mr. Basciano's and, in effect, you're telling me, yes, that it is Mr. Basciano's handwriting but that this list was made under circumstances different from those than others might have indicated.

What Mr. Kousouros is basically saying is that this is a process and I'm not engaged in that process. The process I'm engaged in is supervising several criminal cases in which Mr. Basciano is a defendant, so I'm not about to get -- I've never been an investigator; I'm not going to start doing that now.

If you want to have conversations with the Government and make a proffer about this, that's up to Mr. Chan and his colleagues as to whether to countenance such a or consider such a proffer. That's an executive function, that's not a judicial function. A judicial function is to make sure that the process is fair, that Mr. Basciano's conditions in the SHU are not intolerable, to try to deal with that. I'm willing to deal with that, that's not a problem for me. I'm in no way influenced in doing that by anything that's proffered by the Government. I'm here to be fair to the Government. I'm fair to the defense. It's disturbing to see a list with my name on it. In and of itself, that's enough to

Status Conference (Sealed Portion)

handed to the Government by the Archbishop of New York as a list of people to pray for, it was obtained by some other source that's more problematical.

I'm willing to deal with the conditions of incarceration issue. I'm not willing to conduct a hearing on the Government's assertions or the investigation that is ongoing. Those are two distinct issues for me and you deal with the Government on any proffer. I just don't want to get mixed up in that, it's not my problem, it's not my responsibility, and it's really not appropriate, in my view, that I do so. Yes.

MR. SAVITT: We recognize that, Judge. But what I was perhaps what I said in an unartful way I was trying to emphasize for the record that obviously mindful of the restrictions that we're under we didn't speak obviously to anyone.

THE COURT: You're not allowed to.

MR. SAVITT: We will continue not to do so. But, we are going to speak to Mr. Chan and make a certain proffer and leave it up to the Government to take our information and investigate it.

THE COURT: Here's what I can do. If you all have something to discuss with me this afternoon after you've had your conversation or at some other point this week, I'm

Status Conference (Sealed Portion)

available to meet with you except for tomorrow, tomorrow is not a possibility. But, if there's some way that I can be helpful to deal with this, resolve it, I will be if it's an appropriate function. But to hold a hearing, that's what grand juries do. They present this kind of evidence to grand juries, not to judges, and if you want to have a conversation with the Justice Department that's up to you and your client to do.

But, I don't hold hearings on these kinds of circumstances because, really, there's an investigation ongoing. I don't know what will come of the investigation, if anything, and it would be inappropriate for me to take on an executive function. It's not my job.

MR. KOUSOUROS: Judge, if I may.

My only problem is there is a degree to which the client's conditions, the defendant's conditions are inextricably intertwined with this issue because he's in the situation that he's in because of the investigation. And, there seems to be -- I understand that -- and, Judge, I've read your prior rulings, you were very cognizant of this issue and you have, you know.

THE COURT: I know all about my prior rulings.

MR. KOUSOUROS: You've put him back in population.

The point is that was then and this is now and so for now what we're saying is we would respectfully ask for a hearing so

Status Conference (Sealed Portion)

that you can have the facts before you in order to make a determination as to whether the conditions that he's housed in are, in fact, appropriate. How else to deal with them. We're telling you they're intolerable and the Government comes forward with a letter and a purported reason for them and there doesn't seem to be an end in sight from what we can see and so he's going to stay in those conditions. They can't be dealt with unless a factual determination can be made.

THE COURT: Other things can be dealt with; other things are inappropriate for me to deal with. I'm saying to you and the Government, too, that to the extent that this whole process can be expedited it should be expedited. I've already said that to the Government prior to this. I've said that to the Government two weeks ago on the record in court and I stand by what I said. But I'm not going to get in the middle of what could be a situation where people's safety is implicated, that's just inappropriate. I'm not in law enforcement; they are, and so they're going to have to deal with it and you're going to have to deal with them. But I would like the process to be expedited -- Mr. Chan's heard that from me numerous times.

I'm willing to give everyone, you know, a chance but I'm not willing to take on their responsibility. I'm not going to hold a hearing on whether it's true or it isn't true, that's not for me to do at this stage of the matter. It's

please tell me where you are.

only for the purposes of an investigation.

Status Conference (Sealed Portion)

just the wrong sequence, it's got to be dealt with. Would you

 MR. CHAN: We've reached a significant point in the investigation where we can reveal this to the defendant and defense counsel. It's not fully complete, but we expect to do that soon. But I also know that once the investigation is complete, I think that's not going to affect the conditions of confinement in the sense that his placement in the SHU is not

I think it's the Government's position that he's a continuing threat because of the information that's been disclosed and that we would litigate or our position would be that he should be kept in the SHU for the duration of his pre-trial detention.

THE COURT: We'll get to that subject once this particular aspect of it is more mature. But, the Court has made it very clear that this part of the matter needs to expedited so at least we have some sense from the Government where it's going to be on this, whether there is probable cause to be where this was in the nature of a threat.

MR. KOUSOUROS: What I'm hearing, and what's concerning me, Judge, is that the Government has always wanted to have Mr. Basciano kept in the Special Housing Unit. You told them that their reasons for that were not legitimate.

THE COURT: That was a year ago.

Status Conference (Sealed Portion) 23 1 MR. KOUSOUROS: I understand that. But what I'm 2 hearing is they're still kind of relying on that. 3 THE COURT: Well, no. 4 MR. KOUSOUROS: In addition to this information. 5 they didn't do that. 6 THE COURT: I'm sorry, Mr. Kousouros, you're new 7 here. He is a package, this whole situation is a package: 8 it's not just one thing or another thing, it's the whole thing. And so, I don't know how I can deal with your concerns 9 on behalf of Mr. Basciano in terms of some long-term 10 11 assignment in the Special Housing Unit until this piece of the puzzle becomes clearer to us; and the fact is that on its face 12 you've got five names of people, all of whom I know; one of 13 whom I know very well and why these names are on a list in 14 Mr. Basciano's handwriting which he allegedly gave to someone 15 in his unit or somewhere in the prison, that's a matter of 16 17 some interest to the Court. 18 MR. KOUSOUROS: As it should be, Judge. 19 THE COURT: All right. 20 MR. KOUSOUROS: Perhaps my final question. 21 THE COURT: It is your final question. 22 MR. KOUSOUROS: Can we put a timeframe on this? Is it possible? Can we ask them for a timeframe? 23 24 THE COURT: I've asked the Government to move with 25 alacrity and I think they have demonstrated good faith in that

Status Conference (Sealed Portion)

regard and gave them probable cause and they told me and you and everyone last time they gave us an update. They weren't sure whether they would be able to disclose anything by today and Mr. Chan is here, has disclosed the situation to you, and so that much they have done in a short amount of time. Considering all of the permutations that are involved here and so I take their representations at their face value. That's

so I take their representations at their face value. That's all.

MR. CHAN: Judge, we are moving as fast as we can.

Our next meeting in the case in general I think we have a
status conference in the Basciano 'O5 case two weeks from now.

But, I would, you know, to the extent that you wish to, you can meet with Mr. Chan, I appreciate it if he and his colleagues make themselves available to you. That's his job, not my job. What I will do in open court is ask the Government to contact the warden as to the health aspects of Mr. Basciano's confinement, whother he should be moved to another cell. If that cell is not in good condition and that the based on your representations that there are health aspects to this.

MR. CHAN: Yes, Your Honor.

MR. KOUSOUROS: Is there any possibility that
Mr. Basciano be permitted to make a phone call once in a
while. I mean, can we loosen this up just they're monitored.

Status Conference (Sealed Portion)

they're taped.

THE DEFENDANT: Visits, too.

MR. KOUSOUROS: Can he visit with his wife once in a while? There's got to be a human aspect under whatever conditions. We know the calls are monitored, they're tape recorded, so you're invited to listen, not that you need an invitation, and he can see his wife once in a while. It does seem what I'm looking at here. It certainly doesn't seem that this is in a familial problem. This isn't a matter of messages being passed through family; this may take a while, Judge. We really mean when we say there is a human aspect to it, too, and since you have this limited disclosure if a man can be allowed a phone call once in a while one visit.

THE COURT: Mr. Chan.

MR. CHAN: It's not something can give an answer to right now but I will discuss it with them.

THE COURT: I am available here at the end of the week. If you want to, come back on Friday and see me about this. I'm willing to be here and available to you. But here is the thing: Now that you know at least what's going on, on the face of it, you ought to be talking to the Government if you think that's appropriate, and if there is something that you need to bring to me on Friday, I'll make myself available to you on Friday, I won't wait the two weeks; but you have to understand that this -- and I don't mean in any way shape or

Status Conference (Sealed Portion) 26 form to disparage the defendant -- I have no, I am agnostic as 1 to what this all means. You know what mean when I say 2 "agnostic"? It means that I don't have a point of view as to 3 what -- whether this is true or not true whether it's real or 4 not real. Whether it's a threat or it's not a threat. 5 Whether somebody is out there praying for me or somebody is 6 out there gunning for me. All I want is for you two, if you 7 can, resolve whatever it is. There may be a misunderstanding 8 or it may be real. I have not a clue, and I am not an 9 10 investigator, okay? 11 So that's where we are. I'm going to bring back the 12 public and all I'm going to put on the record is something with regard to the physical conditions and the SHU. 13 14 MR. KOUSOUROS: Can you ask the marshals to keep him 15 available to speak to him afterwards? 16 THE MARSHAL: How long a period of time. 17 THE COURT: He'll need a while. Thank you very 18 much, marshals. 19 MR. KOUSOUROS: Thank you, Judge. 20 MR. SAVITT: Did you want to set a time for Friday, 21 Your Honor? 22 THE COURT: If needed, we'll do it. Are you 23 available Friday, Mr. Chan. 24 MR. CHAN: I'm not available. If this is only about 25 telephone calls and visits. I think we can work something out

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Status Conference (Sealed Portion)
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      so I think it's better.
  2
                THE COURT: Let me know if you need to see me at the
     end of the week. Thursday is a possibility. Can you be
  3
  4
     available?
  5
                MR. CHAN: Yes.
  6
               THE COURT: I'm around Wednesday, Thursday, Friday.
  7
     At your request, I can make myself available.
  8
               MR. KOUSOUROS: Thank you, Judge.
 9
               THE COURT: All right. So, does the Government --
     I'm going to seal this on motion of the Court on the grounds
10
11
     that I've already set forth in the interest of public safety
     and security and so as not to undermine an ongoing
12
     investigation by the Justice Department okay. Let's bring the
13
14
     public back in, please.
15
               (End of Scaled Portion.)
16
               (Continued on next page.)
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Status Conference 28 1 (In open court.) 2 THE COURT: Back on the record. 3 Is there anything else, Mr. Kousouros. 4 MR. KOUSOUROS: No, Your Honor. 5 MR. CHAN: I think that you had said that you wanted 6 to discuss the issue of his specific cell. 7 THE COURT: Right. With respect to the defendant's 8 conditions of incarceration in the SHU, I'm going to request that the Government contact the warden of the MDC and to the 9 extent that there's some evidence that the actual physical 10 11 conditions of the cell which Mr. Basciano currently resides create a health issue. I'm going to ask that he be moved to a 12 different cell long enough for the cell to be cleaned or just 13 moved to another cell which is in good condition, and I would 14 like to have a report back tomorrow on what the status is in 15 16 writing from the warden or his representative. 17 MR. CHAN: Just to be clear. The allegation is that his current cell has feces in it but that he was forced to 18 19 clean it up himself. 20 MR. KOUSOUROS: It's been cleaned but he was put --21 THE COURT: It was cleaned? 22 MR. KOUSOUROS: It's been cleaned. He was put in a 23 cell for a period of time with feces and urine and they 24 brought him some Comet and --25 THE COURT: Comet?

Status Conference 29 1 MR. KOUSOUROS: Comet. THE COURT: It's fine. I mean if it's fine. 2 3 MR. KOUSOUROS: The feces are -- do the conditions 4 remain? THE COURT: What conditions remain that he's in a 5 6 cell. 7 MR. KOUSOUROS: That he's in the SHU. 8 THE COURT: I thought there were still hygenic 9 problems with the cell. 10 MR. KOUSOUROS: Those are gone. 11 THE COURT: That's done. So we needn't do anything 12 about that? 13 MR. SAVITT: That's correct, Judge. It's been 14 cleaned up. 15 THE COURT: He cleaned it? 16 MR. SAVITT: He was initially -- he was ordered to 17 clean it. Ultimately, some other orderly types who came in and cleaned it which is the standard procedure within the 18 19 prison. 20 THE COURT: People who are assigned? 21 MR. SAVITT: People who are assigned to clean cells specifically and I think that's the ones who gave him the idea 22 23 about the Comet. 24 THE COURT: Gave who the idea? 25 MR. KOUSOUROS: Various portions of the bedding area

Status Conference 30 1 and in the cell in order to take away the stench of the previous materials. It would be a laboratory pristine cell. 2 3 THE COURT: It's not what was described to me 4 earlier. 5 MR. SAVITT: No longer, that's correct. 6 THE COURT: And he's alone in the cell. 7 MR. SAVITT: That is correct. 8 THE COURT: It won't be necessary to do that right now, but with regard to the other matter, my understanding is 9 10 that the defense is going to have whatever discussions it 11 thinks are appropriate with the Government and the Court is going to make itself available later this week should it be 12 13 appropriate in the view of the parties for the Court to have 14 some sort of role in resolving some issues that the Court is competent to consider and resolve where it may be appropriate 15 16 for the Court to be involved; and I'm mindful that where there is an ongoing investigation by the Justice Department that 17 it's an executive function and not a judicial function. But, 18 19 to the extent that I can be helpful I'm certainly standing 20 ready, willing, and available to assist the parties. 21 Is there anything else, Mr. Chan? 22 MR. CHAN: No thank you. 23 THE COURT: Anything else from the defense? 24 MR. SAVITT: Not at this time. Thank you very much, 25 Your Honor.

Status Conference 31 1 THE COURT: As I said earlier, the marshals have 2 agreed to keep Mr. Basciano in the building so that he can meet with his defense team this afternoon. Have a nice day. 3 4 MR. CHAN: Thank you. 5 MR. SAVITT: Thank you. 6 MS. STAFFORD: Thank you. 7 MR. KOUSOUROS: Thank you. 8 MS. CARVLIN: Thank you. 9 (WHEREUPON, the proceedings were adjourned .) 10 11 12 13 CERTIFICATE OF REPORTER 14 I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter. 15 16 17 18 19 Anthony D. Frisolone, CSRR, RMR, CRI Official Court Reporter 20 21 22 23 24 25



U.S. Department of Justice

United States Attorney Eastern District of New York

TJS:WYC

£.#2005R00060

One Pierrepont Plaza Brooklyn, New York 11201

Mailing Address: 147 Pierrepont Street Brooklyn, New York 11201

August 28, 2006

<u>Under Seal</u>

By Hand Delivery

James Kousouros, Esq. Ephraim Savitt, Esg. Ying Stafford, Esq. Stephanie Carvlin, Esq.

Re:

United States v. Vincent Basciano Criminal Docket No. 05-0060 (NGG)

Dear Counsel:

Please be advised that the government has received information that, during the trial of United States v. Basciano, et al., Cr. No. 03-929 (NGG), the defendant Vincent Basciano provided to another inmate at the Metropolitan Correctional Center a handwritten note, a copy of which is enclosed, and indicated to the inmate, in sum and substance, that he (Basciano) sought the murder of the listed individuals.

Forensic analysis by the FBI laboratory has confirmed that the handwriting on the note is a positive match to Basciano's known handwriting. Copies of the handwriting analysis reports and exemplars, as well as a fingerprint analysis report, are enclosed.

You have been provided this information pursuant to your and the defendant Basciano's representations to the Court that you and Basciano will not disclose the contents of this

letter, or its enclosures, to any individual who is not Basciano or the above four attorneys of record.

Yours truly,

ROSLYNN R. MAUSKOPF United States/Attorney

Ву:

John Buketta Winston Y. Chan Thomas J. Seigel

Assistant U.S. Attorneys

Enclosures

cc: Hon. Nicholas G. Garaufis

130/060

GREG FLYDRES

JUDSE Nickolms Com Countis -

Dominick Cicolz

Turny Lec Low TANASlime

dekien an an inc

F. (Reg. S4149)

FEDERAL BUREAU OF INVESTIGATION
QUANTICO, VA 22135

To: New York

Your No.:

Title:

OPERATION

OCDETF-LCN AND ITALIAN ORGANIZATIONS

The following specimens were submitted

Questioned Documents Unit:

and were examined in the

Q28

One sheet of paper bearing notations beginning "Greg Andres Judge

Nickolas..." (1B45, E03942125)

K1

Fingerprints of VINCENT J. BASCIANO

Enclosures (15)



Page 1 of 2

This Report is Furnished for Official Use Only

Kc2

Three photocopied pages of various documents bearing purported known

writing of VINCENT J. BASCIANO

К4

Sheet of paper bearing the purported know writing of VINCENT J. BASCIANO (1B23, E03846891)

The following specimen was submitted

and was

examined in the Questioned Documents Unit:

K3

Original of a portion of Kc2

Results of Examination:

Due to the limited quantity of comparable known writing and the presence of characteristics in the questioned writing that are not accounted for in the available known writing, no definite conclusion could be reached whether the questioned writing on specimens Q28 and previously submitted Q26 and Q27 (Laboratory number 050826003 QB FT) was or was not prepared by VINCENT, J. BASCIANO, writer of specimens Kc2 through K4. However, from the limited comparisons that could be conducted, characteristics in common were observed when comparing specimen Q28 with the known writing of BASCIANO, Kc2 through K4, to indicate he may have prepared that questioned writing.

If further examinations are desired, dictated and undicated known writing should be obtained from BASCIANO. The known writing should be handwritten and hand printed on separate sheets of paper similar to the questioned specimens, and should be removed from the writer's view upon completion. Numerous repetitions may be necessary in order to obtain naturally prepared writing. Undictated known writing consists of handwriting prepared during normal course of business activity. Possible sources of undictated writing include business papers, letters, canceled checks, and/or applications.

Indented writing of unknown value was observed on specimens Q28 and K4. Four photographs of each specimen are enclosed for your investigative assistance. Electrostatic lifts of the indented writing are considered secondary evidence and will be returned separately.

Remarks:

Digital images of the submitted evidence are retained. You will be separately advised of the disposition of the submitted evidence and secondary evidence.

Questioned Documents Unit

Page 2 of 2

~ (----

E 338-E36 -Ub (-911) 921-1839-CF/ (-911) 921-1839-CF/ GENNADY MORGON (1-917) 520-2552-1405 (1-718) 876-1900-off GEI-MARTGRGE

(510) 633-7393 (cel)

Jen 0/Frice - Joy Air 732- 970 - 9786. 732- 489, - 8682. cell 732- 841- 6337

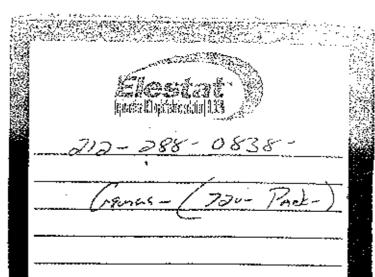
(718) 904-3715

Anthony's Waterproofing Inc.

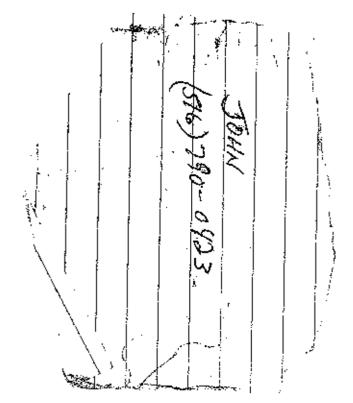
GENERAL CONTRACTING
BILSCOME - TUCK POINTING - CAULKING
CEMENT COATING - BRICK WORK - ROOFING
PAINTING - EPOXY CEMENT
INTERIOR - EXTERIOR

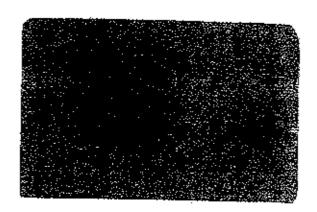
ANTHONY SCHILLAZ, PRESIDENT

Lay Cart



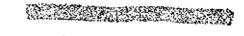
FRANK 917-688-8827

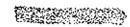




Oct him Doms
or I will
Kill Him

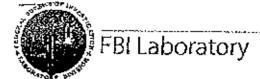
\$**#** last hour hast week (one left) - My Son comes founds 12 - Cups - Two weren) dure yet. They sis one Will make everyone feel Better All Together it was What Iam saying is coming from you I that it You could just let someone Know that











2501 Investigation Parkwey Quantico, Virginia 22135

REPORT OF EXAMINATION

To: New York C-10

Your No.:

Title:

OPERATION

OCCENTION AND ITALIAN ORGANIZATIONS

The following specimen was examined in the Questioned Documents Unit:

K5 Copies of one envelope and two page letter bearing the purported known writing of VINCENT I. BASCIANO

This report contains the result of the questioned document examinations.

Results of Examinations:

It was determined that the questioned writing on previously submitted specimen Q28 was prepared by VINCENT J. BASCIANO, purported writer of specimen K5 and previously submitted specimens K2 through K4 excluding the overwriting.

Remarks:

Page 1 of 2

Por Official Use Only

Remarks:

3

Digital images of specimen K5 are retained. You will be separately advised of the disposition of the submitted evidence.

Questioned Documents Unit

Page 2 of 2

For Official Use Only



COPV

Debra Kalls
32 OLD Hempstone Bond
New City, New York 10956

NAME VINCONT J- SPESSIONS
REGISTER NUMBER 306.94-05.9
METROPOLITAN CORRECTIONAL CENTER 150 PARK ROW
NEW YORK, NY 10007

Case 1:07-cv-00224-NGG-RML Document 1-3 Filed 01/09/07 Page 80 of 103 PageID #: 131

Summay - 20501 2000 700

Sems me mune Depletions 142 10 Hollo my lace Tay Home us inco How I Lane you Dibs I and mail watil I get my sinutes book I get sepresso when I conit call a few times a on. I need to hear you voice and I need to speak to my son. 3 Sives me streeth. It. Lany As I moter IV everything I see I hope] let the opposition to so with you. I just matches the new suy" no there has a scene where he was riving a house with his girldiend son I thought of you Riving a house! @ Your such a pig! +3. Seriasly Dibs T most to go house back rising with you some also want to match you river a house! (3) Bu the man Kelly hossit waitten me in months. I'm him. I thought he neally love me the may I love him. I vess I mas wrong. T reather just hong with you Taill never between me Tail ally benefible with happenes to me Especially with Dominick. I at that boom Atthough I'm over it was and I'm back proposing for I'm which by the man, opening statement shall stand next next! e some fell him to miss him more Abon he could possibly imposine I int most watil Weamson to speak to him again. Die you even get m his cop care or mutancycle cop bixe? I received his pictures has beautiful just live his George in When me you going to sens me more products of you? You could The you, do you know that you little Rock! I'm so in love I could only imagine the pool the government you to minick to testify assinst me. I bet they told him just to stiff against one in both of my trials and they led him go. I now has been colling Horse though to four times a may. Hove

you spoke to Masie. IF you no bell here to fell him he broke my hond Her the last proum in the wood that I milive thought that wall've trans on me. Tell her roles that what the government 2 saying rabout Durchbag, that I rates permission to Kill beauts x at on at lie. I show never see the people I lac if that Remodely the truth. But be cone fl. become I think eventually hell em up with him. Don't get teapped off because your only ore liable to be monitores. Don't trust anyone But notwelly I'm some confortable with woman than with men! In amy case make sure you stay strong even if I'm family guilty.

- betien my case is ricosen with a preal issues. It hope it doesn't eme to that but if it does me still have hope with my appeals.

I hearn that cou-coo has stomach concer is that tour. la is that car-cos just being car-car I mees you to be back in my pany again. I feel that I like my life in rain. All the things I relience in any held some sincred seem do have been a friend It seems hat I only believes in them and I'm one of the few that fellower he rules But I'd washer sie thou to comprimite my value! That's it for mow my love. I still have my specie) roment with you at 10.00 delack I hope you haven't forgetten tentt tod My eye is still very bloom and when I blink I see ightning. Tust when I thought that nothing else mor going to so were I'm mab. But nobody world ever beable to tell I'm plany; cil graveres, and I always have a smile on my face and a rucket is
my pucket that con't must be say hello to you my babydall! (i)
Pleasant dreams and man find match area you amo my son. Cite his
Kiss from me out let him she you a 'file from me I Lare you Deboo!

---- Working Copy ----

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To:

New York C-10

Reference:

Your No. : Title:

OPERATION

OCCUPATION AND TRALIAN

ORGANIZATIONS

The items listed below were examined in the Latent Print Operations Unit:

Q28

One sheet of paper bearing notations beginning "Greg

Andres Judge

Nickelas..." (1B45, E03942125)

K1

fingerprints of VINCENT J. BASCIANO

K4

Sheet of paper bearing the purported know writing of

VINCENT J.

EASCIANO (1823, 803846891)

This report contains the results of the latent print examinations.

Results of Examinations:

Two latent fingerprints of value were developed on Q28. No latent prints were developed on K4.

Case 1:07-cv-00224-NGG-RML Document 1-3 Filed 01/09/07 Page 83 of 103 PageID #: 134

---- Working Copy ----

Page

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2

The latent fingerprints are not the fingerprints of VINCENT J
BASCIANO, FBI
#249066T9; or JOSEPH MASSING, FBI #

Remarks:

5

The items, along with a photograph of the developed latent fingerprints, will be returned under separate cover.

latent Print Operations Unit

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Office of the Attorney General Washington, B.C. 20530

September 19, 2006

LIMITED OFFICIAL USE

MEMORANDUM FOR HARLEY G. LAPPIN

DIRECTOR

FEDERAL BUREAU OF PRISONS

FROM:

SUBJECT:

THE ATTORNEY GENERAL

Origination of Special Administrative Measures (SAM) Pursuant to 28 C.F.R. § 501.3 for Federal Bureau of Prisons

(BOP) Inmale Vincent Baseigno



1. <u>General Provisions:</u>

Adherence to Usual United States Marshals Service (USMS), BOP and Detention Facility (DF) Policy Requirements - In addition to the below-listed SAM, the immate must comply with all usual USMS, BOP, and non-BOP DP policies regarding restrictions, activities, privileges, communications, etc. If there is a conflict between USMS/BOP/DF policies and the SAM, as set forth herein.

Pursuant to 28 C.P.R. § 501.3 Inmate -Basciano Page 2

where the SAM is more restrictive than usual USMS/BOP/DF policies, then the SAM shall control. If usual USMS/BOP/DF policies are more restrictive than the SAM, then USMS/BOP/DF policies shall control.

- b. Interim SAM Modification Authority During the term of this directive, the Director, Office of Enforcement Operations (OEO), Criminal Division, may modify the inmate's SAM as long as any SAM modification authorized by OEO:
 - Does not create a more restrictive SAM;
 - Is not in conflict with the request of the U.S. Attorney for the Pastern District of New York (USA/EDNY), Federal Bureau of Investigation (FBI), or USMS/BOP/DF, or applicable regulations; and
 - Is not objected to by the USA/EDNY, FBI, or USMS/BOP/DF.
- c. Immate Communications Prohibitions The immate is limited, within USMS/BOP/DF's reasonable efforts and existing confinement conditions, from having contact (including passing or receiving any oral, written or recorded communications) with any other inmate, visitor, attorney, or anyone else except as outlined and allowed by this document that could reasonably foresecably result in the immate communicating information (sending or receiving) that could circumvent the SAM's intent of significantly limiting the immate's ability to communicate (send or receive) information relating to criminal information.

Attorney/Client Provisions:

a. Attorney' Affirmation of Receipt of the SAM Restrictions Document - The inmate's attorney (or counsel) - individually by each if more than one (!) - must sign an affirmation acknowledging receipt of the SAM restrictions document. By signing the affirmation, the attorney acknowledges his/her awareness and understanding of the SAM provisions and his/her agreement to abide by these provisions, particularly those that relate to contact between the inmate and his

The term "attorney" refers to the immate's attorney of record, who has been verified and documented by the USA/EDNY, and who has received and acknowledged receipt of the SAM testrictions document. As used in this document, "attorney" also refers to more than one (1) attorney where the inmate is represented by two (2) or more attorneys, and the provisions of this document shall be fully applicable to each such attorney in his/her individual capacity.

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SPECIAL ADMINISTRATIVE MEASURES (SAM)

Pursuant to 28 C.F.R. § 501.3 Invate -Basciano Page 3

attorney and the attorney's staff. The signing of the affirmation does not serve as an endorsement of the SAM or the conditions of confinement, and does not serve to attest to any of the factors set forth in the conclusions supporting the SAM. However, in signing the affirmation, the inmate's attorney, and pre-cleared staff, acknowledge the restriction that they will not forward third-party messages to or from the inmate.

- The USA/EDNY shall present, or forward, the attorney affirmation of receipt of the SAM restrictions document to the inmate's attorney.
- ii. After initiation of SAM and prior to the inmate's attorney being permitted to have attorney/client-privileged contact with the inmate, the inmate's attorney shall execute a document affirming receipt of the SAM restrictions document and return the original to the USA/EDNY.
- The USA/EDNY shall maintain the original of the SAM acknowledgment document and forward a copy of the signed document to OEO in Washington, D.C. and the USMS/BOP/DF.
- Attorney/Client Privileged Visits May be contact or non-contact, at the discretion of the USMS/BOP/DF.
- c. Attorney May Disseminate Inmate Conversations The immate's attorney may disseminate the contents of the immate's communication to third parties for the sole purpose of preparing the immate's defense and not for any other reason on the understanding that any such dissemination shall be made solely by the immate's attorney, and not by the attorney's staff.
- d. Unaccompanied Attorney's Pre-cleared Paralegal(s) May Meet With Client -

² "Precleared" when used with regard to an attorney's staff, or "pre-cleared staff member," refers to a co-counsel, paralegal, or an investigator who is actively assisting the inmate's attorney with the inmate's defense, who has submitted to a background check by the FBI and USA/EDNY, who has successfully been cleared by the FBI and USA/EDNY, and who has received a copy of the inmate's SAM and has agreed – as evidenced by his/her signature – to adhere to the SAM restrictions and requirements. As used in this document, "staff member" also refers to more than one (1) staff member, and the provisions of this document shall be fully applicable to each such staff member in his/her individual capacity. A "paralegal" will also be governed by any additional DF rules and regulations concerning paralegals.

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Pursuant to 28 C.P.R. § 501.3 Immate -Baseiano

The inmate's autorney's pre-cleared paralegal(s) may meet with the inmate without the necessity of the inmate's attorney being present. An investigator may not meet alone with the inmate. These meetings may be contact or non-contact, at the discretion of the USMS/BOP/DF.

- e. Simultaneous Multiple Legal Visitors The immate may have multiple legal visitors provided that at least one (1) of the multiple legal visitors consists of the immate's attorney or pre-cleared paralegal. These meetings may be contact or non-contact, at the discretion of the USMS/BOP/DF.
- f. Legally Privileged Telephone Calls The following rules refer to all legally-privileged telephone calls or communications:
 - i. Inmate's Attorney's Pre-cleared Staff May Participate in Immate Telephone Calls. The immate's attorney's pre-cleared staff are permitted to communicate directly with the immate by telephone, provided that the immate's attorney is physically present and participating in the legal call as well.
 - ii. Inmate's Initiation of Legally-Privileged Telephone Calls Inmateinitiated telephone communications with his attorney or pre-cleared staff
 are to be placed by a USMS/BOP/DF staff member and the telephone
 handed over to the inmate only after the USMS/BOP/DF staff member
 confirms that the person on the other end of the line is the immate's
 attorney. This privilege is contingent upon the following additional
 restrictions:
 - (1) The inmate's attorney will not allow any nonpre-cleared person to communicate with the inmate, or to take part in and/or listen to or overhear any communications with the inmate.
 - (2) The immate's attorney must instruct his/her staff that:
 - (a) The immate's attorney and pre-cleared staff are the only persons allowed to engage in communications with the inmate.
 - (b) The attorney's staff (including the attorney) are not to patch through, forward, transmit, or send the inmate's communications to third parties.

<u>LIMITED OFFICIAL USE</u>

Page 5

Pursuant to 28 C.F.R. § 501.3 Inmate -Basciano

- (3) No telephone call/communication, or portion thereof, except as specifically authorized by this document:
 - (a) Is to be overheard by a third party.1
 - (b) Will be patched through, or in any manner forwarded or transmitted to a third party.
 - (c) Shall be divulged in any manner to a third party, except as otherwise provided in Section 2d.
 - (d) Shall be in any manner recorded or preserved. The impate's attorney may make written notes of attorney/ client-privileged communications.
- (4) If USMS/BOP/DF, FBI or USA/EDNY determines that the inmate has used or is using the opportunity to make a legal call to speak with another inmate or for any other non-legal reason that would circumvent the intent of the SAM, the inmate's ability to contact his attorney by telephone may be suspended or eliminated.
- h. Documents Provided by Attorney to Immate The immate's attorney may provide his/her client with or review with the immate, documents related to his defense, including discovery materials, court papers (including indictments, court orders, motions, etc.), and/or material prepared by the immate's attorney. Any document not related to the immate's defense must be sent to the immate via general correspondence and will be subject to the mail provisions of subparagraphs 2i and 3g. Documents previously reviewed and cleared for receipt by the immate, and already in the immate's possession at the outset of the visit, may be discussed or reviewed by the immate and the immate's aftorney during the visit

¹ For purposes of the SAM, "third party" does not include officials of the USMS/BOP/DF/FBI/Department of Justice (DOI), or other duly authorized federal authorities when acting in connection with their official duties. This section does not allow monitoring of attorney/elient-privileged communications.

^{*} Except by USMS/BOP/DF/FBI/DOI or other duly authorized federal authorities. This section does not allow monitoring of attorney/client-privileged communications.

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SPECIAL ADMINISTRATIVE MEASURES (SAM)

Pursuant to 28 C.F.R. § 501.3 Inmate -Basciano Page 6

- i. None of the materials provided may include inflammatory materials, materials inciting to violence or military training materials, or materials that may be used to pass messages from inmate to inmate, unless such materials have been precleared by the USA/EDNY and the FBI.
- ii. The USA/EDNY may authorize additional documents to be presented to the inmate. If any document not listed or described above needs to be transmitted to the inmate, consent for the transmission of the document can be obtained from the USA/EDNY without the need to formally suck approval for an amendment to the SAM.
- i. Legal Mail The inmate's attorney may not send, communicate, distribute, or divulge the immate's mail, or any portion of its contents (legal or otherwise), to third parties.⁵

In signing the SAM acknowledgment document, the immate's attorney and pre-cleared staff will acknowledge the restriction that only immate case-related documents will be presented to the immate, and that neither the attorney nor bis/her staff will forward third party mail to or from the immate.

Inmate's Non-legal Contacts:

- Non-legal Telephone Contacts -
 - The inmate is limited to non-legal telephone calls with his immediate family members.⁶

⁵ Legal mail is defined as properly marked correspondence (marked "Legal Mail") addressed to or from the immate's attorney of record. All other mail, including that otherwise defined by the USMS/BOP/DF as Special Mail, shall be processed as "non-legal-mail."

⁶ The inmate's "immediate family members" are defined as the inmate's (USMS/BOP/DF/FBI-verifiable) spouse, natural children, parents, and siblings.

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SPECIAL ADMINISTRATIVE MEASURES (SAM)

Pursuant to 28 C.F.R. § 501.3

Inmate -Basciano

- ii. The quantity and duration of the inmate's non-legal telephone calls with his immediate family members shall be set by the USMS/BOP/DF, with a minimum of one (1) call per month, unless otherwise agreed upon by USMS/BOP/DF, FBI and USA/EDNY to allow more calls.
- Rules for Telephone Calls For all non-legally privileged telephone calls or communications, no telephone call/communication, or portion thereof:
 - Is to be overheard by a third party.⁷
 - Is to be patched through, or in any manner forwarded or transmitted, to a third party.
 - Shall be divulged in any manner to a third party.
 - Shall be in any manner recorded or preserved.²

All telephone calls shall be in English unless a fluent FBI, USMS/BOP/DF-approved translator is available to contemporaneously monitor the telephone call. Arranging for a translator may require at least fourteen (14) days advance notice.

- c. Telephone SAM Restriction Notifications For all non-legal telephone calls to the immate's immediate family member(s):
 - USMS/BOP/DF shall inform the inmate of the telephone SAM restrictions prior to each telephone call.
 - ii. USMS/BOP/DF shall verbaily inform the immate's immediate family member(s) on the opposite end of the immate's telephone communication of the telephone SAM. USMS/BOP/DF is only required to notify the immate's communication recipient in English.

For purposes of the SAM, "third party" does not include officials of the USMS/BOP/DF/FBI/DOJ, or other duly authorized federal authorities when monitoring in connection with their official duties. This section does not allow monitoring of attorney/client communications.

^{*} Except by USMS/BOP/DF/FBI/DOI, or other duly authorized federal authorities.

Page S

Pursuant to 28 C.F.R. § 501.3 Inmate -Basciano

- iii. USMS/BOP/DF shall document each such telephone notification.
- d. Family Call Monitoring All calls with the immate's immediate family member(s) shall be:
 - Contemporaneously monitored by the FBI.
 - ii. Contemporaneously recorded (as directed by the FBI) in a manner that allows such telephone calls to be analyzed for indications the call is being used to pass messages soliciting or encouraging nots of violence or other orimes, or to otherwise attempt to circumvent the SAM.
 - iii. A copy of each inmate/immediate family member telephone call recording shall be provided by USMS/BOP/DF on a single, individual cassette tape (per call) for forwarding to the FBI. These recordings shall be forwarded on a call-by-call basis as soon as practicable.
- e. Improper Communications If tolephone call monitoring or analysis reveals that any call or portion of a call involving the immate contains any indication of a discussion of illegal activity, the soliciting of or encouraging of acts of violence or terrorism, or actual or attempted circumvention of the SAM, the immate shall not be permitted any further calls to his immediate family members for a period of time to be determined by USMS/BOP/DF. If contemperaneous monitoring reveals such inappropriate activity, the telephone call may be immediately terminated.
- f. Non-legal Visits
 - i. Limited Visitors: The immate shall be permitted to visit only with his immediate family members. However, the immate will not be permitted to visit with his son, Vincent Basciano, Jr. Any allowable visitor's identity and family member relationship to the immate will be confinued by the USMS/BOP/DF and FBI in advance.

The inmate's "immediate family members" are defined as the inmate's (USMS/BOP/DP/FBI-verifiable) spease, natural children, parents, and siblings.

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SPECIAL ADMINISTRATIVE MEASURES (SAM)

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Pursuant to 28 C.F.R. § 501.3 Inmate -Basciano

- ii. Visit Criteria All non-legal visits shall be:
 - (1) Contemporaneously monitored by USMS/BOP/DF and/or FBI, in a manner that allows such visits to be analyzed for indications the visit is being used to pass messages soliciting or encouraging acts of violence or other crimes, or to otherwise attempt to circumvent the SAM.
 - (2) Permitted only with a minimum of fourteen (14) calendar days advance written notice to the USMS/BOP/DF facility where the inmate is housed.
 - (3) Limited to one (1) adult visitor at a time. However, FBI-verified children of the immate may visit with a pre-approved adult visitor.
- S. Non-legal Mail Any mail not clearly and properly addressed to/from the inmate's attorney and marked "Legal Mail" (incoming or outgoing). Non-legal mail is limited to only the inmate's immediate family, U.S. courts, federal judges, U.S. Attorneys' Offices, members of U.S. Congress, BOP, and other federal law enforcement entities.

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General correspondence with limitations: correspondence is restricted to only immediate family members. Volume and frequency of outgoing general correspondence with immediate family members only is limited to three (3) pieces of paper (not larger than 8 1/2 x 11), double-sided, once per calendar week to a single recipient, at the discretion of the USMS/BOP/DF. The identity and family member relationship to the inmate will be confirmed by USMS/BOP/DF and FBI.

ii.

General correspondence without limitations: correspondence to U.S. courts, federal judges, U.S. Anorneys' Offices, members of U.S. Congress. BOP, and other federal law enforcement entities. There is no volume nor frequency limitation on mail to/from these parties unless there is evidence of abuse of these privileges, threatening correspondence is detected, circumvention of the SAM is detected, or the quantity to be processed becomes unreasonable to the extent that efficient processing to protect the security, good order or discipline of the institution, the public or national security may be jeopardized.

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LIMITED OFFICIAL USE

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Pursuant to 28 C.F.R. § 501.3 Immate -Basciano Page 10

- iii. All non-legal mail will be:
 - (1) Copied Shall be copied (including the surface of the envelope) by the warden, or his/her designee, of the facility in which the immate is housed.
 - (2) Forwarded Shall be forwarded, in copy form, to the location designated by the FBI.
 - (3) Analyzed After government analysis and approval, if appropriate, the inmate's incoming/outgoing non-legal mail will be forwarded to the USMS/BOP/DF for delivery to the inmate (incoming); or directly to the addressee (outgoing).

The Federal Government will forward the immate's non-legal mail to the USMS/BOP/DF for delivery to the immate or directly to the addressee after a review and analysis period of:

- (a) A reasonable time not to exceed fourteen (14) business days for mail which is written entirely in the English language.
- (b) A reasonable time not to exceed sixty (60) business days for any mail which includes writing in any language other (ban English, to allow for translation.
- (c) A reasonable time not to exceed sixty (50) business days for any mail where the Federal Government has reasonable suspicion to believe that a code was used, to allow for decoding.
- iv. Mail Seizure If outgoing/incoming mail is determined by USMS/BOP/DF or FBI to contain overt or covert discussions of or requests for illegal activities, the soliciting or encouraging of acts of violence or terrorism, or actual or attempted circumvention of the SAM, the mail shall not be delivered/forwarded to the intended recipient but referred to the FBI for appropriate action. The inmate shall be notified in writing of the seizure of any mail.

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Pursuant to 28 C.F.R. § 501.3 Inmate -Basciano

Communication With News Media:

The impate will not be permitted to talk with, meet with, correspond with, or otherwise communicate with any member, or representative, of the news media, in person, by telephone, by furnishing a recorded message, through the mail, through his attorney, through a third party, or otherwise.

5. No Group Prayer:

- The immate shall not be allowed to engage in group prayer with other immates.
- b. If an FBI and/or USMS/BOP/DF-approved religious representative is to be present for prayer with the inmate, the prayer shall be conducted as part of a contact or non-contact visit, at the discretion of the USMS/BOP/DF.

6. No Communal Cells and No Communication Between Cells:

- The immate shall not be allowed to share a cell with another immate.
- b. The inmate shall be limited within the USMS/BOP/DP's reasonable efforts and existing confinement conditions, from communicating with any other immate by making statements audible to other immates or by sending notes to other immates.

Recording Conversations Between Cells:

- a. USMS/BOP/DF/FBI are hereby authorized to place microphones in the haliways and elsewhere outside the inmate's cell to record any statements made by the inmate to other inmates or staff.
- b. The Notice of SAM given to the immate shall notify the immate that he is subject to such recording.

Cellblock Procedures:

a. The immate shall be kept separated from other immates as much as possible while in the cellblock area.

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Pursuant to 28 C.F.R. § 501.3 Immate -Basciano

b. The immate shall be limited, within USMS/BOP/DF's reasonable efforts and existing confinement conditions, from communicating with any other inmate while in the cellblock area.

9. Commissary Privileges:

The USMS/BOP/DF shall restrict access to commissary items or any other objects determined by USMS/BOP/DF to be capable of being converted into dangerous instruments.

Access to Mass Communications:

To prevent the immate from receiving and acting upon critically-timed information or information coded in a potentially undetectable manner, the immate's access to materials of mass communication is restricted as follows:

a. Periodicals/Newspapers -

- i. The immate may have access to publications determined not to facilitate criminal activity or be detrimental to national security; the security, good order or discipline of the institution; or the protection of the public. This determination is to be made by the FBI, in consultation with the USMS/BOP/DF and USA/EDNY.
- ii. Sections of the periodical/newspaper which offer a forum for information to be passed by unknown and/or unverified individuals, including out not limited to classified advertisements and letters to the editor, should be removed from the periodicals/newspapers prior to distribution to the inmate.
- iii. The inmate shall then have access to the remaining portions of the periodicals/newspapers in accordance with USMS/BOP/DF policy, after a delay of at least thirty (30) days. In accordance with subparagraph 3g above, the FBI will review the remaining portions of the publications prior to distribution to the inmate and be responsible for any translations required.
- iv. In order to evoid passing messages/information from inmate to inmate, the inmate shall not be allowed to share the publication(s) with any other inmates.

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SPECIAL ADMINISTRATIVE MEASURES (SAM)

Page 13

Pursuant to 28 C.F.R. § 501.3 Immate -Basciano

- Television and Radio The immate is permitted access to radio and television channels/stations, in accordance with USMS/BOP/DF policies.
- c. Termination or Limitation If the USMS/BOP/DF determines that the mass communications are being used to send messages to the immate relating to the furtherance of criminal activities, the immate's access may be limited or terminated for a period of time to be determined by the USMS/BOP/DF.

11. Frequent Cell Searches:

USMS/BOP/DF is hereby directed to search the inmate's cell frequently and to take appropriate disciplinary action for any infractions.

12. Transfer of Custody:

In the event that the immate is transferred to or from the custody of the USMS, BOP or any other DF, the SAM provisions authorized for this immate will continue in effect, without need for any additional DOJ authorization.

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RESPONSE TO REQUEST FOR ADMINISTRATIVE REMEDY - PART B

Iumate Name: BASCIANO, Vincent

Reg. No. 30694-054

Administrative Remedy Id.: #424811-F2

This is in response to your Request for Administrative Remedy dated August 27, 2006, wherein you request information regarding the security reasons that you are not suitable for general population.

You are being held in SHU in Administrative Detention, a non-punitive status for which restricted conditions of confinement are required to ensure the safety of inmates or others, the protection of property, or the security and orderly running of the institution. Specifically, you are being held in the Special Housing Unit (SHU) in Administrative Detention pending the outside investigation of a possible criminal act. Your housing status continues to be reviewed.

Accordingly, as you only seek clarification of the security reasons for your current housing assignment, your request for relief is granted.

If you are dissatisfied with this response, you may appeal to the Regional Director, Federal Bureau of Prisons. U.S. Customs Plouse - 7th Floor, 2nd & Chestnut Streets, Philadelphia, PA 19106, within 20 calendar days of the date of this response.

Marvin D. Morrison, Warden

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BASCIANO, Vincent Reg. No. 30694-054 Appeal No. 424811-R1 Page One

Part B - Response

In your appeal, you claim you are under investigation and feel the security measures implemented upon you at MCC New York are harsh. You claim these severe conditions hinder your privileges and meaningful access to your attorney. You request immediate removal of the harsh conditions.

In your Request for Administrative Remedy, you requested to know the reason for your continued placement in administrative detention, as you claimed you did not know why you were in the Special Housing Unit (SHU). The Warden adequately addressed this specific issue. However, you did not raise specific concerns regarding conditions of your SHU placement (i.e., visiting, phone calls, recreation, attorney visits). You must first present issues for possible resolution at the institution before you raise them in an administrative appeal. These specific issues will not be addressed in this response. Accordingly, your appeal is denied.

If you are dissatisfied with this response, you may appeal to the General Counsel, Federal Bureau of Prisons. Your appeal must be received in the Administrative Remedy Section, Office of General Counsel, Federal Bureau of Prisons, 320 First Street, N.W., Washington, D.C. 20534, within 30 calendar days of the date of this response.

Date: November 7, 2006

Regional Director